

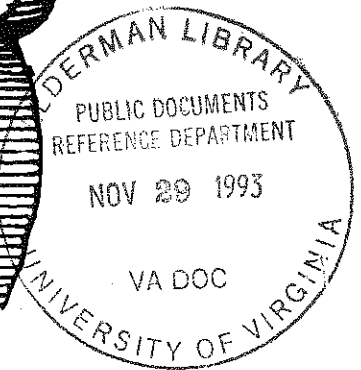
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THE VIRGINIA REGISTER

OF REGULATIONS

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October 18, 1993

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VIRGINIA REGISTER

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative.

The *Virginia Register* has several functions. The full text of all regulations, both as proposed and as finally adopted or changed by amendment are required by law to be published in the *Virginia Register of Regulations*.

In addition, the *Virginia Register* is a source of other information about state government, including all Emergency Regulations issued by the Governor, and Executive Orders, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of all public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of proposed action; a basis, purpose, impact and summary statement; a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations.

Under the provisions of the Administrative Process Act, the Registrar has the right to publish a summary, rather than the full text, of a regulation which is considered to be too lengthy. In such case, the full text of the regulation will be available for public inspection at the office of the Registrar and at the office of the promulgating agency.

Following publication of the proposal in the *Virginia Register*, sixty days must elapse before the agency may take action on the proposal.

During this time, the Governor and the General Assembly will review the proposed regulations. The Governor will transmit his comments on the regulations to the Registrar and the agency and such comments will be published in the *Virginia Register*.

Upon receipt of the Governor's comment on a proposed regulation, the agency (i) may adopt the proposed regulation, if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the *Virginia Registrar* and the promulgating agency. The objection will be published in the *Virginia Register*. Within twenty-one days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative Committee, and the Governor.

When final action is taken, the promulgating agency must again publish the text of the regulation, as adopted, highlighting and explaining any substantial changes in the final regulation. A thirty-day final adoption period will commence upon publication in the *Virginia Register*.

The Governor will review the final regulation during this time and if he objects, forward his objection to the Registrar and the agency. His objection will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days and require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall

be after the expiration of the twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

Proposed action on regulations may be withdrawn by the promulgating agency at any time before the regulation becomes final.

EMERGENCY REGULATIONS

If an agency determines that an emergency situation exists, it then requests the Governor to issue an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited in time and cannot exceed a twelve-months duration. The emergency regulations will be published as quickly as possible in the *Virginia Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures (See "Adoption, Amendment, and Repeal of Regulations," above). If the agency does not choose to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 of Chapter 1.1:1 (§§ 9-6.14:6 through 9-6.14:9) of the Code of Virginia be examined carefully.

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Index 1 - Volume 10	

Dec. 22	Jan. 10, 1994
Jan. 5	Jan. 24
Jan. 19	Feb. 7
Feb. 2	Feb. 21
Feb. 16	Mar. 7
Mar. 2	Mar. 21
Index 2 - Volume 10	

Mar. 16	April 4
Mar. 30	April 18
April 13	May 2
April 27	May 16
May 11	May 30
May 25	June 13
June 8	June 27
Index 3 - Volume 10	

June 22	July 11
July 6	July 25
July 20	Aug. 8
Aug. 3	Aug. 22
Aug. 17	Sept. 5
Aug. 31	Sept. 19
Final Index - Volume 10	

Volume 11

Sept. 14	Oct. 3
Sept. 28	Oct. 17
Oct. 12	Oct. 31
Oct. 26	Nov. 14
Nov. 9	Nov. 28
Nov. 23	Dec. 12
Dec. 7	Dec. 26
Index 1 - Volume 11	

TABLE OF CONTENTS

NOTICES OF INTENDED REGULATORY ACTION

Notices of Intent 217

PROPOSED REGULATIONS

ALCOHOLIC BEVERAGE CONTROL BOARD

Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations. (VR 125-01-1) 230

Advertising. (VR 125-01-2) 254

Tied House. (VR 125-01-3) 260

Requirements for Product Approval. (VR 125-01-4) .. 266

Retail Operations. (VR 125-01-5) 269

Manufacturers and Wholesalers Operations. (VR 125-01-6) 282

Other Provisions. (VR 125-01-7) 288

VIRGINIA ASBESTOS LICENSING BOARD

Public Participation Guidelines. (VR 137-01-1) 302

BOARDS OF EDUCATION; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; SOCIAL SERVICES; AND YOUTH AND FAMILY SERVICES

Standards for Interdepartmental Regulation of Residential Facilities for Children. (VR 270-01-003, VR 470-02-01, VR 615-29-02, VR 690-40-004) 303

STATE EDUCATION ASSISTANCE AUTHORITY

Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs under Title IV, Part B of the Higher Education Act of 1965 as amended. (VR 275-01-1) 352

BOARD FOR GEOLOGY

Public Participation Guidelines (REPEALING). (VR 335-01-1) 361

Public Participation Guidelines. (VR 335-01-1:1) 361

VIRGINIA WORKERS' COMPENSATION COMMISSION

Proposed Rules of the Virginia Workers' Compensation Commission. (VR 405-01-06) 363

DEPARTMENT OF PERSONNEL AND TRAINING

Public Participation Guidelines. (VR 525-01-1) 371

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Virginia Energy Assistance Program (Withdrawn). (VR 615-08-01) 373

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

Public Participation Guidelines (REPEALING). (VR 627-01-1) 373

Public Participation Guidelines. (VR 627-01-1:1) 373

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Traffic and Parking Regulations. (VR 660-01-01) 375

FINAL REGULATIONS

DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

Public Participation Guidelines (REPEALED). (VR 602-01-1) 386

Nondiscrimination Under State Grants and Programs (REPEALED). (VR 602-01-2) 386

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Aid to Families with Dependent Children (AFDC) Program - Fifth Degree Specified Relative. (VR 615-01-43) 386

DEPARTMENT OF THE TREASURY (THE TREASURY BOARD)

Virginia Security for Public Deposits Act Regulations. (VR 640-02) 387

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDERS

Virginia State Fair Raffle and Drawing Rules (27-93) 400

"Lotto By Mail Promotion"; Final Rules for Game Operation (28-93) 400

Virginia's Thirty-Seventh Instant Game Lottery; "Movies, Music & Money," Final Rules for Game

Table of Contents

Operation (29-93) 400

VIRGINIA TAX BULLETIN

Interest Rates (93-10) 401

GOVERNOR

EXECUTIVE ORDERS

Providing for Assistance of the Virginia National Guard to the Virginia Department of State Police for the Southern Governors' Association/African Heads of State Summit. (73-93) 403

Declaration of a State of Emergency Arising from a Fire in Chesterfield County, Virginia. (77-93) 403

Rescinding Executive Order Number Eight (90). (79-93) 404

GOVERNOR'S COMMENTS

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

Rules Relating to Compulsory Minimum Training Standards for Dispatchers. (VR 240-01-5) 405

Regulations Relating to Criminal History Record Information Use and Security. (VR 240-02-1) 405

DEPARTMENT OF HEALTH (STATE BOARD OF)

Regulations Governing the Virginia Medical Scholarship Program. (VR 355-40-400) 405

GENERAL NOTICES/ERRATA

DEPARTMENT OF EMERGENCY SERVICES

Policy of Nondiscrimination of the Basis of Disability. 406

DEPARTMENT OF ENVIRONMENTAL QUALITY

Virginia Coastal Resources Management Program

Public Notice of Approved Routine Program Implementations. 406

DEPARTMENT OF HEALTH (STATE BOARD OF)

Virginia Voluntary Formulary Board

Adoption and Issuance of Revisions to the Virginia

Voluntary Formulary..... 406

VIRGINIA CODE COMMISSION

Notice of mailing address. 407

Forms for filing material on dates for publication. .. 407

ERRATA

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Public Participation Guidelines. (VR 173-01-00:1) 407

CALENDAR OF EVENTS

EXECUTIVE

Open Meetings and Public Hearings 408

LEGISLATIVE

Open Meetings and Public Hearings 431

CHRONOLOGICAL LIST

Open Meetings 432

Public Hearings 434

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †

† Indicates entries since last publication of the Virginia Register

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Acid Rain Operating Permits-Revision PP)**. The purpose of the proposed action is to develop a regulation to meet the operating permit requirements contained in Titles IV and V of the Clean Air Act, as amended in November 1990, for sources of the pollutants that produce acid rain.

Public Meeting: A public meeting will be held by the Department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10 a.m. on December 1, 1993, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad Hoc Advisory Group: The department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by close of business October 22, 1993, and provide your name, address, telephone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. If you are selected to be on the group, you are encouraged to attend the public meeting and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus.

Public Hearing Plans: The department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: Title IV of the Clean Air Act (the Act) as amended November 1990 requires the U.S. Environmental Protection Agency (EPA) to establish a program to reduce nationwide emissions of the primary causes of acid rain, sulfur dioxide (SO₂) and nitrogen oxides (NO_x). The burning of fossil fuels, particularly coal and oil, releases emissions of these chemicals into the atmosphere. Various chemical reactions may then take place, resulting in sulfate, nitrate,

sulfuric acid and nitric acid emissions. These newly transformed compounds will then be deposited near the facilities which emitted them or be transported hundreds of miles. They can be deposited in either a dry form (as a gas, aerosol, or particle) or a wet form (in rain, fog or snow). This acidic deposition results in acidification of streams and lakes which then cannot support fish life, damage to trees and forest ecosystems in general at higher elevations, decrease in visibility, damage to historic buildings, statues, and sculptures, and acceleration of the decay of building materials and paints. Acidic deposition in the form of acidic aerosols may also pose a threat to human health.

The major contributions of SO₂ and NO_x in the atmosphere come from emissions of electric utilities. Throughout the nation as of 1985, 70% of SO₂ emissions and 37% of NO_x emissions came from electric utilities. Reducing the total level of SO₂ and NO_x emissions below present levels will reverse the effects of acidic deposition previously described, prevent the damage caused by these emissions from increasing, and reduce the costs of the damage in future years.

Title V of the Act provides a mechanism to implement the various requirements under the other titles in the Act, including the acid rain provisions of Title IV, through the issuance of operating permits. Under this title, the EPA is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993. The department is completing work on the development of a separate operating permit regulation for all sources subject to Title V except those sources emitting pollutants that produce acid rain.

The operating permits issued under this program should enhance the ability of EPA, the states, and citizens to enforce the requirements of the Act; clarify for the permitted sources exactly which air quality requirements apply; and also aid in implementing the Act by providing states with permit fees to support their programs.

A permit sets out for both the department and the owner the regulatory requirements appropriate to that source's operation. The benefits are that the operator or owner knows what requirements must be fulfilled and the department has an agreement with the owner through the permit that these requirements will be carried out. It enables the department to more efficiently and effectively carry out its source surveillance activities while providing

Notices of Intended Regulatory Action

a clear mandate for each source on what its responsibility entails. An operating permit inclusive of all requirements pertaining to the source ensures that the owner of the source is fully informed of all applicable state and federal regulations. The operating permit program provides that both the department and the owner conduct a periodic review of polluting activities to ensure that effective emission reductions are taking place.

An operating permit provides the mechanism for the department to assess any facility's compliance with the air quality standards and regulations that provide a basis to protect human health and the environment. The permit provides a direct enforcement mechanism for the department to determine a facility's compliance whereas the enforcement of the standards and regulations without the permit is more difficult because specific conditions for the individual facility have not been derived from those standards and regulations.

The public participation requirements of the operating permit program provide an opportunity for citizens to review and to provide comments about the compliance performance of facilities emitting air pollutants along with the department.

Applicable Federal Requirements: The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. Affected sources as defined under the acid rain provisions of Title IV of the Act are one of the source categories required to be covered under the provisions of any Title V program. The federal regulations carrying out Title V, 40 CFR Part 70, require that the following elements either be included in operating permit programs developed by the states or considered in the development of those programs:

1. Major sources of volatile organic compounds, nitrogen oxides, sulfur dioxide, particulate matter, lead, and hazardous air pollutants must be subject to the regulation. Nonmajor sources that are regulated under Section 111 of the Act, New Source Performance Standards, and Section 112 of the Act, National Emission Standards for Hazardous Air Pollutants, must be subject to the regulation but can be deferred from initial permitting. Sources subject to the requirements of the acid rain program under Title IV of the Act must be covered under the regulation.

2. The applicant must identify all federal and state requirements applicable to the source and describe emissions of all regulated pollutants from emissions units at the source. The department must verify this information and set terms and conditions in the permit concerning the applicable requirements.

3. The applicant must submit a compliance plan, schedule and certification with the application addressing requirements that have been met and those that have not been met.

4. The permitting authority may provide a permit shield for all terms and conditions specified in the permit, including any requirements that are specifically identified as not being applicable.

5. The permitting authority must provide an application shield for sources that submit timely and complete applications.

6. The permitting authority must allow the public and affected states to review the draft permit developed by the permitting authority. The permitting authority may allow public hearings to be held in addition to providing an opportunity for public comment. After review of the comments and the development of a proposed final permit, the proposed permit must be sent to EPA. The permitting authority must allow EPA 45 days to review the permit during which time it can object to the permit.

7. The permitting authority must provide in its regulation several mechanisms to modify the permit.

8. The permitting authority may provide operational flexibility for the source through several mechanisms: (i) writing alternative operating scenarios in the permit, (ii) through various emissions trading options, (iii) through changes to the permit (on-permit change) that do not exceed emissions allowed under the permit and do not violate applicable requirements, and (iv) through changes not addressed by the permit (off-permit change) that do not violate applicable requirements or any permit term or condition.

Section 408 of Title IV covers the permit and compliance plan requirements for affected sources, those stationary sources that have at least one emission unit emitting air pollutants which cause acid rain. Section 408(a) states that the requirements of Title IV are to be implemented by permits issued to affected sources in accordance with Title V, as modified by the requirements of Title IV. Any permit issued to an affected source must prohibit all of the following:

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that is held for the source. An allowance is the authorization to emit one ton of sulfur dioxide during or after a specified calendar year.

2. Exceedances of applicable emissions rates.

3. The use of any allowance prior to the year for which it was allocated.

4. Contravention of any other provision of the permit.

Notices of Intended Regulatory Action

Permits must be issued for a period of five years. No permit can be issued that is inconsistent with the applicable requirements of Titles IV and V.

Section 408(b) requires that compliance plans be submitted with each permit application. Alternative methods of compliance may be authorized by permitting authorities; however, a comprehensive description of the schedule and means by which the unit will rely on one or more of these alternative methods must be provided by the applicant. Any transfers of allowances recorded by EPA will automatically amend all applicable proposed or approved permit applications, compliance plans and permits. EPA may also require a demonstration of attainment of national ambient air quality standards for a source or, from the owner of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance.

Section 408(d) describes the requirements for Phase II permits, those to be issued by states with EPA-approved Title V programs. The owners of sources subject to Phase II of Title IV must submit their permit applications and compliance plans by January 1, 1996, to the state permitting authority. The states with approved programs must issue the permits no later than December 31, 1997. Permit applications and compliance plans that have been received by January 1, 1996, are binding and are enforceable as a permit for purposes of Titles IV and V until a permit is issued by the permitting authority.

Section 408(e) covers new sources or emissions units, those that commence commercial operation on or after November 15, 1990. New sources must submit a permit application and compliance plan to the permitting authority no later than 24 months before the later of (1) January 1, 2000, or (2) the date on which the source commences operation. The permitting authority must issue a permit to a new source if the requirements of Titles IV and V are satisfied.

Section 408(f) covers stationary sources or emissions units subject to nitrogen oxides requirements. Applications and compliance plans must be submitted to permitting authorities no later than January 1, 1998. The permitting authority must issue a permit to these sources or emissions units if the requirements of Titles IV and V are satisfied.

Section 408(g) allows the applicant to submit a revised application and compliance plan at any time after the initial submission. Section 408(h) states that it is unlawful for an owner or designated representative of the owner to fail to submit applications and compliance plans in the time period required by Title IV or to operate any affected source except in compliance with the terms and conditions of a permit and compliance plan issued by EPA or an approved permitting authority. Section 408(h)(3) prohibits shutdown of an electric utility steam generating unit for failure to have an approved permit or compliance plan. However, the unit may be subject to applicable

enforcement provisions under section 113 of the Act.

Section 408(i) requires that no permit can be issued to an affected source until the designated representative has filed a certificate of representation with regard to the requirements of Title IV, including the holding and distribution of allowances. This section also describes the requirements for certification of representation when there are multiple holders of a legal or equitable title to, or leasehold interest in, an affected unit or when a utility or industrial customer purchases power from an affected unit under life-of-the-unit, firm power contractual arrangements.

The regulation carrying out the requirements of Section 408 of Title IV, 40 CFR Part 72, and EPA guidance on Part 72 stipulates specific requirements for affected sources that are different from the requirements of 40 CFR Part 70. The differences include, but are not limited to, the following:

1. Only a designated representative or alternative designated representative of the source owner is authorized to make permit applications and other submissions under the Title IV requirements and must file a certificate of representation with EPA before they can assume these responsibilities. (40 CFR 72, Subpart B.)
2. The state permitting authority must allow EPA to intervene in any appeal of an acid rain permit. (40 CFR Part 72, § 72.72(5)(iv).)
3. The period by which the acid rain portion of an operating permit can be appealed administratively is 90 days. Judicial appeal of an acid rain portion of a permit cannot occur after 90 days. (40 CFR Part 72, § 72.72(5)(ii).)
4. An application is binding and enforceable as a permit until the permit is issued. (40 CFR Part 72, § 72.72(b)(1)(i)(B).)
5. The acid rain portion of an operating permit must be covered by a permit shield. (40 CFR Part 72, § 72.51.)
6. The acid rain rules allow for four different types of permit revisions. Two of these are the same as those provided for in 40 CFR Part 70: permit modifications and administrative amendments. The other two are unique to the acid rain program: fast-track modifications and automatic amendments. (40 CFR Part 72, Subpart H.)
7. In general, permits are issued using Part 70 procedures. However, there are some exceptions. For instance, within 10 days of determining whether an acid rain application is complete, the permitting authority must notify EPA of that determination. The permitting authority must also notify EPA of any state or judicial appeal within 30 days of the filing of the

Notices of Intended Regulatory Action

appeal. (40 CFR Part 72, §§ 72.72(b)(1)(i)(C) and 72.72(b)(5)(iii).)

Alternatives: As discussed below, there are three available alternatives that can be considered:

1. Develop a regulation to meet the operating permit requirements of Titles IV and V of the Act and the federal regulations implementing those requirements. This alternative would result in the approval by EPA of the Title V program for sources of air pollutants that cause acid rain. The department would have the authority and responsibility to review and to determine the approvability of operating permits for these sources in Virginia. The revenue from emissions fees charged to these sources would be used to fund the department's operating permit program.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. Depending on the differences between the required provisions and the alternatives chosen, this option might or might not result in the approval by EPA of the Title V program for sources of air pollutants that cause acid rain.

3. Take no action to amend the regulations. This alternative would result in the disapproval by EPA of the Title V program for sources of air pollutants that cause acid rain. Furthermore, EPA may choose to sanction the state for failing to develop this requirement of the Title V program. EPA may choose to sanction a state by withholding funds for highway projects, by requiring additional offsets be provided by new or modifying sources in nonattainment areas or both. EPA might also take over that portion of the operating permit program concerning the sources of air pollutants causing acid rain, issuing permits, charging emissions fees and retaining those fees.

Costs and Benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until December 3, 1993, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Nancy S. Saylor, Policy Analyst, Department of Environmental Quality, P. O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249.

VA.R. Doc. No. C94-48; Filed September 15, 1993, 9:40 a.m.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Corrections intends to consider promulgating regulations entitled: **VR 230-30-001:1. Minimum Standards for Jails and Lockups.** The purpose of the proposed action is to establish minimum standards for the administration of and programs in jails and lockups. A public hearing will be held on the proposed regulations after publication. The location, date, and time of the public hearing will be published at a later date.

Statutory Authority: §§ 53.1-5, 53.1-68 and 53.1-131 of the Code of Virginia.

Written comments may be submitted until November 5, 1993.

Contact: Lou Ann White, Certification Supervisor, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

VA.R. Doc. No. C94-23; Filed September 13, 1993, 3:39 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Corrections intends to consider amending regulations entitled: **VR 230-30-002. Community Diversion Standards.** The purpose of the proposed action is to amend minimum standards for the development, operation and evaluation of programs and services provided under the Community Diversion Incentive Act. The board is conducting its biennial review of the standards. By filing this notice, the board withdraws the Notice of Intent to amend regulations published in 7:23 VA.R. 3658 August 12, 1991. The board plans to hold a public hearing on the proposed regulations after publication. The location, date, and time of the hearing will be announced following publication of the proposed regulations.

Statutory Authority: §§ 53.1-5, 53.1-180 et seq. of the Code of Virginia.

Written comments may be submitted until November 5, 1993.

Contact: Dee Malcan, Chief of Operations, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3242.

VA.R. Doc. No. C94-57; Filed September 15, 1993, 11:24 a.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Criminal Justice Services Board intends to consider promulgating

Notices of Intended Regulatory Action

regulations entitled: **Crime Prevention Specialist**. The purpose of the proposed action is to establish requirements and administrative procedures for individuals employed by local and state law-enforcement agencies who are given the designation Crime Prevention Specialist. The Crime Prevention Specialist designation is available only to individuals employed by a local or state law-enforcement agency in Virginia. A public hearing will be held after publication of the proposed regulations.

Statutory Authority: §§ 9-170(1) and (25), 9-173.14 and 9-173.15 of the Code of Virginia.

Written comments may be submitted until October 20, 1993.

Contact: Patrick D. Harris, Department of Criminal Justice Services, 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8467.

VA.R. Doc. No. C93-2180; Filed August 19, 1993, 1:28 p.m.

DEPARTMENT OF FORESTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Forestry intends to consider repealing regulations entitled: **VR 310-01-1. Public Participation Guidelines**. The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. Public comment is also requested on whether to use advisor counsel with regard to this matter. An informational meeting will be held at the Department of Forestry, Conference Room, Charlottesville, Virginia, on October 25, 1993, at 2 p.m. The agency intends to hold a public hearing on the repeal of the proposed regulations after publication.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1101 of the Code of Virginia.

Written comments may be submitted until October 25, 1993.

Contact: Ronald Jenkins, Supervisor, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903-0758, telephone (804) 977-6555.

VA.R. Doc. No. C93-2169; Filed August 19, 1993, 2:28 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Forestry intends to consider promulgating regulations entitled: **VR 310-01-1:1. Public Participation Guidelines**. The purpose of the proposed action is to promulgate

public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. Public comment is also requested on whether to use advisor counsel with regard to this matter. An informational meeting will be held at the Department of Forestry, Conference Room, Charlottesville, Virginia, on October 25, 1993, at 2 p.m. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1101 of the Code of Virginia.

Written comments may be submitted until October 25, 1993.

Contact: Ronald Jenkins, Supervisor, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903-0758, telephone (804) 977-6555.

VA.R. Doc. No. C93-2268; Filed August 19, 1993, 2:28 p.m.

BOARD FOR GEOLOGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Geology intends to consider amending regulations entitled: **VR 335-01-2. Rules and Regulations for the Virginia Board of Geology**. The purpose of the proposed action is to review the current fee structure to assure compliance with § 54.1-113 of the Code of Virginia and review the entire regulation to consider any amendments which may be necessary. The agency does not intend to hold a public hearing on the proposed amendments to this regulation after publication.

Statutory Authority: §§ 54.1-113, 54.1-201, and 54.1-1402 of the Code of Virginia.

Written comments may be submitted until November 19, 1993.

Contact: David E. Dick, Assistant Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 376-8595.

VA.R. Doc. No. R94-27; Filed September 21, 1993, 11:56 a.m.

BOARD OF HEALTH PROFESSIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Health Professions intends to consider promulgating regulations entitled: **Public Participation Guidelines of the Board of Health Professions**. The purpose of the proposed action is

Notices of Intended Regulatory Action

to develop guidelines the board will use to obtain public input in developing regulations. This regulation will replace emergency regulations currently in effect. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Written comments may be submitted until October 21, 1993.

Contact: Richard D. Morrison, Deputy Director for Research, 6606 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9918.

VA.R. Doc. No. C93-2197; Filed August 25, 1993, 2:15 p.m.

BOARD FOR HEARING AID SPECIALISTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Hearing Aid Specialists intends to consider amending regulations: **VR 375-01-02. Board for Hearing Aid Specialists Rules and Regulations.** The purpose of the proposed action is to solicit public comment on all existing regulations as to the effectiveness, efficiency, necessity, clarity and cost of compliance (fee analysis) in accordance with its public participation guidelines and § 54.1-110 of the Code of Virginia. The agency intends to hold a public hearing after publication of the proposed regulations.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until November 5, 1993.

Contact: Geralde W. Morgan, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VA.R. Doc. No. C94-53; Filed September 15, 1993, 11:46 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Cost Sharing and Similar Charges; Discontinue Recipient Copayments on Dialysis Services.** The purpose of the proposed action is to discontinue charging recipients for copayments when they are receiving dialysis services. The agency does not intend to hold a public hearing on this regulatory action after

publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until November 3, 1993, to Wayne Kitsteiner, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VA.R. Doc. No. C94-54; Filed September 15, 1993, 11:24 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Criteria for Preadmission Screening and Continued Stay.** The purpose of the proposed action is to revise the definition of medical/nursing need and the evaluation of persons seeking community-based care to avoid future nursing facility placement. The agency does not intend to hold a public hearing on this regulatory action after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until November 5, 1993, to Chris Pruett, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VA.R. Doc. No. C93-2079; Filed August 13, 1993, 2:47 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Methods and Standards for Establishing Payment Rates, Home Health Reimbursement; Methods and Standards for Establishing Payment Rates-Long Term Care; Home Health Agency Reimbursement; Nursing Facility Criminal Record Checks.** The purpose of the proposed action is to revise home health agency methodologies, to revise regulations to reimburse providers for the costs of obtaining criminal record background checks on nursing facility employees. The agency does not intend to hold a public hearing on this regulatory action after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Notices of Intended Regulatory Action

Written comments may be submitted until November 5, 1993, to Vicki Simmons, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

V.A.R. Doc. No. C93-2078; Filed August 13, 1993, 2:46 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Methods and Standards for Establishing Payment Rates—Inpatient Hospital Care: NICU and GME**. The purpose of the proposed action is to clarify the department's existing reimbursement policies for neonatal intensive care units (NICU) and graduate medical education (GME). The agency does not intend to hold a public hearing on this regulatory action after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until November 17, 1993, to Peterson A. Epps, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

V.A.R. Doc. No. R94-28; Filed September 21, 1993, 3:15 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Liens and Recoveries**. The purpose of the proposed action is to permit the department to place liens against the real property of Medicaid recipients in accordance with § 63.1-133.1 of the Code of Virginia, and with the Code of Federal Regulations at 42 CFR 433.36. The agency does not intend to hold a public hearing on this regulatory action after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until November 17, 1993, to Rudy Brown, Fiscal Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad

St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

V.A.R. Doc. No. R94-24; Filed September 17, 1993, 10:34 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **PASARR and Annual Resident Review/Education Component of NF Care/NF Residents' Appeal Rights**. The purpose of the proposed action is to amend regulations to comply with regulations issued by the Health Care Financing Administration regarding PASARR. The agency does not intend to hold a public hearing on this regulatory action after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until November 5, 1993, to Margie Jernigan, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

V.A.R. Doc. No. C93-2081; Filed August 13, 1993, 2:47 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Payment of Title XVIII Part A and Part B Deductible/Coinsurance; Methods and Standards for Establishing Payment Rates - Long Term Care: Nursing Facility Payment System**. The purpose of the proposed action is to limit the payment of Medicare Part A coinsurance amount paid by Medicaid and eliminate overpayments made to providers during the first nine months of the second fiscal year. The agency does not intend to hold a public hearing on this regulatory action after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until November 5, 1993, to Stan Fields, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

V.A.R. Doc. No. C93-2080; Filed August 13, 1993, 2:47 p.m.

Notices of Intended Regulatory Action

BOARD OF MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-01. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend §§ 2 through 7 pertaining to limited licensees and their application for obtaining full licensure. The agency does not intend to hold a public hearing on the proposed regulation unless requested.

Statutory Authority: §§ 54.1-2400 and 54.1-2936 of the Code of Virginia.

Written comments may be submitted until November 22, 1993, to Hilary H. Connor, M.D., 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Russell D. Porter, Assistant Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

VA.R. Doc. R94-41; Filed September 24, 1993, 3:40 p.m.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **VR 470-01-01. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines in conformance with § 9-6.14:7.1 of the Code of Virginia. The agency does not intend to hold a public hearing on the repeal of the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 37.1-10 of the Code of Virginia.

Written comments may be submitted until November 3, 1993.

Contact: Rubyjean Gould, Administrative Services Director, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3915.

VA.R. Doc. No. C94-11; Filed September 2, 1993, 3:07 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Mental Health,

Mental Retardation and Substance Abuse Services Board intends to consider promulgating regulations entitled: **VR 470-01-01:1. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines in conformance with § 9-6.14:7.1 of the Code of Virginia. The agency does not intend to hold a public hearing on the repeal of the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 37.1-10 of the Code of Virginia.

Written comments may be submitted until November 3, 1993.

Contact: Rubyjean Gould, Administrative Services Director, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3915.

VA.R. Doc. No. C94-78; Filed September 2, 1993, 3:07 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Examiners

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mines, Minerals and Energy Board of Examiners intends to consider promulgating regulations entitled: **VR 480-04-2.1. Board of Examiners Certification Regulations.** The purpose of the proposed action is to establish a permanent regulation setting forth requirements for certification of persons performing specialized tasks in mines. This regulation will replace the emergency Board of Examiners Certification Regulations, VR 480-04-2. A public hearing will be held on October 12, 1993, at 10 a.m. at the DMME, Buchanan-Smith Building, Rte. 23, Big Stone Gap, VA, to receive comments on this notice. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 45.1-12 of the Code of Virginia.

Written comments may be submitted until November 3, 1993.

Contact: Harry Childress, Chairman, Board of Examiners, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8100.

VA.R. Doc. No. C93-2193; Filed August 25, 1993, 11:07 a.m.

DEPARTMENT OF MOTOR VEHICLES

† Notice of Intended Regulation Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of

Notices of Intended Regulatory Action

Motor Vehicles intends to consider amending regulations entitled: **VR 485-10-7701. Privacy Protection Act Rules and Regulations.** The purpose of the proposed action is to enhance customer services. A public hearing on the proposed regulation will be held after the proposed regulation is published.

Statutory Authority: § 46.2-208 of the Code of Virginia.

Written comments may be submitted until November 22, 1993.

Contact: Judy Vesely, Policy Analyst, Department of Motor Vehicles, 2300 W. Broad St., Room 321, Richmond, VA 23220, telephone (804) 367-0130.

V.A.R. Doc. No. R94-29; Filed September 23, 1993, 2:19 p.m.

BOARD OF PHARMACY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Pharmacy intends to consider amending regulations entitled: **VR 530-01-1. Regulations of the Virginia Board of Pharmacy.** The purpose of the proposed action is to consider amendments to regulations to include the following issues: satellite pharmacies in hospitals, pharmacy technicians, elements of a prescription, and compounding of sterile products. A public hearing will be held after publication of the proposed regulations.

Statutory Authority: §§ 54.1-2400, 54.1-3307, 54.1-3404 and 54.1-3434 of the Code of Virginia.

Written comments may be submitted until November 18, 1993.

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911.

V.A.R. Doc. No. R94-62; Filed September 28, 1993, 4:59 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Pharmacy intends to consider promulgating regulations entitled: **VR 530-01-3. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency Public Participation Guidelines with permanent regulations. No public hearing is planned during the comment period on this matter, as the board plans to adopt without changing the emergency regulations currently in effect.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted until November 18,

1993.

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911.

V.A.R. Doc. No. R94-63; Filed September 28, 1993, 4:59 p.m.

BOARD OF PROFESSIONAL COUNSELORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider amending regulations entitled: **VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed action is to amend the examination fees and reduce renewal fees for certified substance abuse counselors. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted until October 20, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7328.

V.A.R. Doc. No. C93-2233; Filed August 31, 1993, 12:18 p.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Professional and Occupational Regulation intends to consider amending regulations entitled: **VR 190-03-1. Polygraph Examiners Regulations.** The purpose of the proposed action is to solicit public comment on all existing regulations as to the effectiveness, efficiency, necessity, clarity and cost of compliance (fee analysis) in accordance with its public participation guidelines and § 54.1-110 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication, during the comment period.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until November 19, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad

Notices of Intended Regulatory Action

St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VA.R. Doc. No. R94-42; Filed September 24, 1993, 11:57 a.m.

REAL ESTATE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider amending regulations entitled: **Real Estate Board Regulations, Real Estate License Laws, Fair Housing Laws.** The purpose of the proposed action is to propose to undertake a review and seek public comments on all its regulations for promulgation, amendment and repeal as is deemed necessary in its mission to regulate Virginia real estate licensees. A public hearing will be held on the proposed action after publication.

Statutory Authority: §§ 54.1-200 and 54.1-2105 of the Code of Virginia.

Written comments may be submitted until November 1, 1993.

Contact: Joan L. White, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

VA.R. Doc. No. C93-2093; Filed August 16, 1993, 12:18 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† Withdrawal of Notices of Intended Regulatory Action

The State Board of Social Services is **withdrawing** the Notice of Intended Regulatory Action on the regulation entitled "Standards and Regulations for Licensed Homes for Adults," initially published in 6:19 VA.R. 3142 June 18, 1990.

VA.R. Doc. No. R94-44; Filed September 24, 1993, 3:37 p.m.

* * * * *

The State Board of Social Services is **withdrawing** the Notice of Intended Regulatory Action on the regulation entitled "Calculation of Expected Cohabitant Contribution in the Aid to Dependent Children (ADC) Program," initially published in 8:13 VA.R. 2108 March 23, 1992.

VA.R. Doc. No. R94-32; Filed September 17, 1993, 11:06 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider amending regulations entitled: **VR 615-08-1. Virginia Energy Assistance**

Program. The purpose of the proposed action is to incorporate emergency regulations as final regulatory action for the 1993-94 program year. Regulatory requirements are contained in Title VI of the Human Services Reauthorization Act of 1990 (Public Law 101-501). No public hearing is planned on the proposed regulation after publication.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until December 18, 1993, to Charlene H. Chapman, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenber, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. C94-64; Filed September 28, 1993, 3:57 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider repealing regulations entitled: **VR 615-22-02. Standards of Regulations for Licensed Homes for Adults.** The purpose of the proposed action is to repeal the existing standards and regulations for licensed homes for adults. No public hearing is scheduled after publication of the proposed repeal. The State Board of Social Services will consider public comments at its regularly scheduled meeting.

Statutory Authority: § 63.1-174 of the Code of Virginia.

Written comments may be submitted until November 18, 1993, to Cheryl W. Worrell, Program Development Supervisor, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenber, Agency Regulatory Coordinator, Bureau of Governmental Affairs, Division of Planning and Program Review, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. C94-43; Filed September 24, 1993, 3:37 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider promulgating regulations entitled: **VR 615-39-01. Module for Residential Facilities for Children.** The purpose of the proposed action is to develop standards applicable to residential facilities for children licensed by the Department of Social Services. This module will be applied in addition to the Standards for Interdepartmental Regulation of Residential Facilities for Children. A public hearing is not planned after publication of the proposed regulation. The board will

Notices of Intended Regulatory Action

consider public comments at its regularly scheduled meeting.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until November 15, 1993, to Doris Jenkins, Division of Licensing Programs, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenber, Legislative Analyst, Governmental Affairs, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. C94-14; Filed September 13, 1993, 3:40 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Professional Soil Scientists intends to consider amending regulations entitled: **VR 627-02-01. Board for Professional Soil Scientists Regulations.** The purpose of the proposed action is to review the current fee structure to assure compliance with § 54.1-113 of the Code of Virginia. The agency does not intend to hold a public hearing on the proposed amendments to this regulation.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until November 19, 1993.

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

VA.R. Doc. No. R94-25; Filed September 21, 1993, 11:56 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider promulgating regulations entitled: **VR 672-20-30. Regulations Governing Management of Vegetative Waste.** The purpose is to adopt regulations governing management of vegetative waste that establish standards and procedures pertaining to management, use and disposal of vegetative waste to encourage the development of facilities for the decomposition of vegetative waste.

Basis and Statutory Authority: The basis for this regulation is the Virginia Waste Management Act as set out in Chapter 14 (§§ 10.1-1402(11) and 10.1-1408.1.L.) of Title 10.1 of the Code of Virginia.

Need: Vegetative wastes are presently regulated as a solid waste under solid waste management regulations with specific requirements. The board is required to provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of facilities for the decomposition of vegetative waste. It is necessary to develop this regulation to carry out the requirements of § 10.1-1408.1.L. of the Code.

Substance and Purpose: The purpose of these regulations is to establish standards and procedures pertaining to use, storage and disposal of vegetative waste. The proposed regulation will provide the appropriate management alternatives available which meet the requirements for protection of public health, environment and natural resources. The regulations will provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of facilities for the decomposition of vegetative waste. The regulations will address an expedited approval process. The purpose is to encourage the development of facilities for the decomposition of vegetative waste.

Estimated Impact: There are 135 sanitary landfills and 52 Construction/Demolition/Debris landfills presently permitted for operation in the state with new permit applications pending. They handle or propose to handle varying quantities and types of vegetative wastes. Adoption of proposed regulations would simplify the present handling of the material and affect the processing of new permits. Establishment of environmentally sound management techniques and standards are essential to proper, consistent management practices.

Alternatives: The General Assembly in amending the Code of Virginia mandated the development of procedures to encourage the development of facilities for decomposition of vegetative wastes. The alternatives considered have been the development of the regulation as proposed or the amendment of solid waste regulations to incorporate alternative standards. Amending the present solid waste regulation would be more time consuming and delay the development of appropriate standards and alternatives. Developing a specific regulation for vegetative waste focuses the regulatory effort more efficiently and simplifies public participation.

Public Comments: The Department of Environmental Quality will hold a public meeting to consider public comment on the proposed regulatory action. The department requests that the public submit comments, at the meeting or by letter, on the correctness of the regulatory action, any ideas or advice the agency should consider in formation and drafting of the proposed amendments to the regulations, and the costs and benefits of the proposed regulation amendment. The department intends to use an ad hoc advisory committee to assist in revising the proposed regulations. Persons interested in being on the "Interested Persons Mailing List" should

Notices of Intended Regulatory Action

provide name, address and specific areas of interest.

The department intends to hold at least one informational proceeding (informal hearing) after the proposed regulations are published. The department does not intend to hold a public hearing (evidentiary hearing). On October 7, 1993, at 10 a.m., the department will hold a public meeting to discuss the proposal and to hear public comment on the proposed regulation. The meeting will be held in the Conference Room C, 1st Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia. Written comments will be received until October 20, 1993, at 5 p.m. Please submit comments to Mr. William F. Gilley, Department of Environmental Quality, Eleventh Floor, Monroe Building, 101 North Fourteenth Street, Richmond, Virginia 23219.

Accessibility to Persons with Disabilities: The meetings are being held at a public facility believed to be accessible to persons with disabilities. Any person with question on the accessibility to the facility should contact Mr. William F. Gilley at (804) 225-2966 or TDD (804) 371-8737. Persons needing interpreter services for the deaf must notify Mr. Gilley no later than September 15, 1993.

Statutory Authority: § 10.1-1402(11) of the Code of Virginia.

Written comments may be submitted until October 20, 1993.

Contact: William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

V.A.R. Doc. No. C93-2172; Filed August 18, 1993, 8:31 a.m.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Waste Management Facility Operators intends to consider amending regulations entitled: **VR 674-01-02. Waste Management Facility Operators Regulations.** The purpose of the proposed action is to review the current fee structure to assure compliance with § 54.1-113 of the Code of Virginia and review the entire regulation to consider any amendments which may be necessary. The agency does not intend to hold a public hearing on the amendments to this regulation.

Statutory Authority: §§ 54.1-113, 54.1-201, and 54.1-2211 of the Code of Virginia.

Written comments may be submitted until November 19, 1993.

Contact: David E. Dick, Assistant Director, 3600 W. Broad

St., Richmond, VA 23230, telephone (804) 367-8595.

V.A.R. Doc. No. R94-26; Filed September 21, 1993, 11:56 a.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-13-07. Ground Water Withdrawal Regulation.** The purpose of the proposed action is to establish regulatory guidelines for agricultural ground water withdrawals as required by the Ground Water Management Act of 1992.

Basis and Statutory Authority: Section 62.1-256.1 of the Ground Water Management Act of 1992 requires that the board issue ground water withdrawal permits in accordance with adopted regulations. Section 62.1-256.8 of the Act authorizes the board to adopt regulations necessary to administer and enforce the Act. Section 62.1-260 E of the Act requires that all persons withdrawing ground water in excess of 300,000 gallons per month for agricultural or livestock watering purposes in the Eastern Virginia or Eastern Shore Ground Water Management Areas apply for and obtain a ground water withdrawal permit. Section 62.1-258 of the Act requires that any person who proposes a new withdrawal of ground water in excess of 300,000 gallons per month in any ground water management area for agricultural or livestock watering purposes obtain a ground water withdrawal permit.

Need: The Ground Water Management Act of 1992 requires that persons who withdraw more than 300,000 gallons per month for agricultural or livestock watering purposes obtain a ground water withdrawal permit. The Act further requires that the board issue ground water withdrawal permits in accordance with adopted ground water withdrawal regulations. The current Ground Water Withdrawal Regulations must be amended to incorporate application requirements and permit issuance criteria for agricultural ground water withdrawal permits.

Substance and Purpose: This proposed regulatory amendment will establish regulatory guidelines for agricultural ground water withdrawals as required by the Ground Water Management Act of 1992. Agricultural ground water withdrawals were previously exempted from regulation in the Ground Water Act of 1973.

The purpose of this proposed amendment is to establish regulatory controls on agricultural users of more than 300,000 gallons of ground water per month in order to protect the public welfare, safety and health from the negative impacts of over utilization of the ground water resource. Application requirements, permit issuance criteria, and withdrawal monitoring requirements for agricultural ground water withdrawals will be included in the existing regulation.

Notices of Intended Regulatory Action

Estimated Impact: Amendments to the Ground Water Withdrawal Regulation will impact 23 known agricultural ground water users who have voluntarily reported their ground water withdrawals in the past. An unknown additional number of existing agricultural ground water users in the Eastern Virginia and Eastern Shore Ground Water Management Areas will also be impacted. It is anticipated that a maximum of 16 hours will be required to gather necessary information and complete an application for an existing agricultural ground water user. There may be additional costs associated with an agricultural ground water withdrawal permit for withdrawal monitoring and reporting. The range of these costs will be dependent on regulatory requirements. The costs associated with an application for a new agricultural ground water withdrawal will be determined by the information requirements to support such an application that are included in the proposed amendment to the regulation.

Alternatives: The Ground Water Management Act of 1992 requires that agricultural ground water withdrawals in excess of 300,000 gallons per day within ground water management areas be permitted. The Act further requires that the board issue all permits in accordance with adopted regulations. No alternative, other than amending the Ground Water Withdrawal Regulation, is considered appropriate.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternative or other alternatives. In addition, the board will hold two public meetings to receive views and comments on amendments to the Ground Water Withdrawal Regulation to include agricultural withdrawals. The meetings will be held on October 25, 1993, 7:30 p.m. at the Eastern Shore Community College, Lecture Hall, 29300 Lankford Highway, Melfa, VA 23410 and October 26, 1993, 2 p.m. at the James City County Board of Supervisors Room, Building C, 101 C Mounts Bay Road, Williamsburg, VA 23185. A question and answer session on the proposed action will be held one-half hour prior to the beginning of both of these meetings.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold at least one informational proceeding (informal hearing) on this proposed amendment after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a formal evidential hearing on this proposed amendment after it is published in the Register of Regulations.

Accessibility to Persons with Disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Doneva A. Dalton at the address listed below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing

interpreter services for the deaf must notify Mrs. Dalton no later than October 13, 1993.

Advisory Committee/Group: An advisory group was convened during the late spring of 1993 to provide input to the agency regarding the proposed amendment to the regulation. The advisory group is composed of representatives from state and federal agencies with knowledge of agricultural water use, the academic community, agricultural interest groups, independent agricultural producers, and regional ground water protection groups. The advisory group is currently finalizing its position on topics to be included in the proposed regulatory amendment.

Statutory Authority: §§ 62.1-256.1, 62.1-256.8, 62.1-260 E and 62.1-258 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on November 5, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Terry D. Wagner, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5203.

VA.R. Doc. No. C93-2232; Filed August 31, 1993, 3:27 p.m.

BOARD OF YOUTH AND FAMILY SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Youth and Family Services intends to consider promulgating regulations entitled: **Standards for the Conduct of Research on Clients and Records of the Department of Youth and Family Services.** The purpose of the proposed action is to provide guidelines to ensure competent, complete and professional human research activities as defined in § 32.1-162.16 of the Code of Virginia to be conducted or authorized by the department. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 66-10.1 of the Code of Virginia.

Written comments may be submitted until November 18, 1993.

Contact: Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

VA.R. Doc. No. R94-61; Filed September 29, 1993, 9:21 a.m.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text. Language which has been stricken indicates proposed text for deletion.

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulation: VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations.

Statutory Authority: §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia.

Public Hearing Date: December 20, 1993 - 10 a.m.

Written comments may be submitted through December 17, 1993.

(See Calendar of Events section for additional information)

Basis: §§ 4.1-103 12 and 17, 4.1-111 A, 9-6.14:7.1 D and 9-6.14:11 of the Code of Virginia. Authority of the board to promulgate regulations generally; to do all acts necessary and advisable to carry out the purposes of Title 4.1 of the Code of Virginia; to develop public participation guidelines which shall set out a general policy for the use of ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency; and to ascertain the fact basis for agency case decisions through the use of informal conferences or consultation proceedings.

Purpose: To amend various sections generally so as to conform to the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.) and other technical changes as they relate to recodification; to make changes in style or form to numerous sections; to comply with 1993 amendments to the Administrative Process Act; and to give the deputy department director for regulation or his designee the opportunity to participate in the administrative hearing process.

Substance:

1. Update the sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1.
2. To conduct informal conferences as required by the Administrative Process Act.
3. To expand the agency's public participation guidelines in regulation development to establish criteria for determining when the board considers ad hoc panels and consultations with interested groups and individuals appropriate and intends to make use of such panels or consultations.

4. The deputy department director for regulation or his designee is given broad powers not only to represent the Division of Enforcement and Regulation during administrative hearings, but to petition the board for modifications of hearing officers' decisions and request rulings on other motions.

Issues:

1. To comply with the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.).
2. To comply with 1993 amendments to the Administrative Process Act.
3. Representation of the Division of Enforcement and Regulation at initial and appeal hearings.

Impact:

1. All ABC licensees (approximately 13,532 as of 8/1/93) located within and outside the Commonwealth will be affected by recodification, informal conferences, public participation guidelines, and representation of the Division of Enforcement and Regulation.
2. There will not be any additional costs associated with the agency's implementation of these amendments except for informal conferences which will cost approximately \$21,000 annually.
3. There will not be any additional costs associated with compliance by licensees.

Summary:

The proposed amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1; (ii) provide that informal conferences be conducted as required by the Administrative Process Act; (iii) expand the agency's public participation guidelines in regulation development to establish criteria for determining when the board considers ad hoc panels and consultations with interested groups and individuals appropriate and when the board intends to make use of such panels or consultations; (iv) provide the deputy department director for regulation or his designee with broad powers, not only to represent the Division of Enforcement and Regulation during administrative hearings, but to petition the board for

modifications of hearing officers' decisions and request rulings on other motions.

VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations.

PART I. HEARINGS BEFORE HEARING OFFICERS.

§ 1.1. Appearance.

A. Any interested party who would be aggrieved by a decision of the board upon any application or in a disciplinary proceeding may appear and be heard in person, or by duly authorized representative, and produce under oath evidence relevant and material to the matters in issue. Upon due notice a hearing may be conducted by telephone as provided in Part IV.

B. The interested parties will be expected to appear or be represented at the place and on the date of hearing or on the dates to which the hearing may be continued.

C. If an interested party fails to appear at a hearing, the hearing officer may proceed in his absence and render a decision.

§ 1.2. Argument.

Oral or written argument, or both, may be submitted to and limited by the hearing officer. Oral argument is to be included in the stenographic report of the hearing.

§ 1.3. Attorneys/representation.

Any individual, partnership, association or corporation who is a licensee of the board or applicant for any license issued by the board or any interested party shall have the right to be represented by counsel at any board hearing for which he has received notice. The licensee, applicant or interested party shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine and question witnesses, present evidence on behalf of the corporation, draw conclusions and make arguments before the hearing officers.

§ 1.4. Communications.

Communications regarding hearings before hearing officers upon licenses and applications for licenses should be addressed to the ~~Director, Division of Hearings~~ Chief Hearing Officer, Administrative Hearings Section.

§ 1.5. Complaints.

The board in its discretion and for good cause shown may arrange a hearing upon the complaint of any aggrieved party(s) against the continuation of a license. The complaint shall be in writing directed to the Director

of Regulatory Division, Division of Enforcement and Regulation, setting forth the name and post office address of the person(s) against whom the complaint is filed, together with a concise statement of all the facts necessary to an understanding of the grievance and a statement of the relief desired.

§ 1.6. Continuances.

Motions to continue a hearing will be granted as in actions at law. Requests for continuances should be addressed to the ~~Director, Division of Hearings~~ Chief Hearing Officer, Administrative Hearings Section, or the hearing officer who will preside over the hearing.

§ 1.7. Decisions.

A. Initial decisions.

The decision of the hearing officer shall be deemed the initial decision, shall be a part of the record and shall include:

1. A statement of the hearing officer's findings of fact and conclusions, as well as the reasons or bases therefor, upon all the material issues of fact, law or discretion presented on the record, and

2. The appropriate rule, order, sanction, relief or denial thereof as to each such issue.

B. Summary decisions.

At the conclusion of a hearing, the hearing officer, in his discretion, may announce the initial decision to the interested parties.

C. Notice.

At the conclusion of any hearing, the hearing officer shall advise interested parties that the initial decision will be reduced to writing and the notice of such decision, along with notice of the right to appeal to the board, will be mailed to them or their representative and filed with the board in due course. (See Part II, § 2.1 for Appeals).

D. Prompt filing.

The initial decision shall be reduced to writing, mailed to interest parties, and filed with the board as promptly as possible after the conclusion of the hearing or the expiration of the time allowed for the receipt of additional evidence.

E. Request for early or immediate decision.

Where the initial decision is deemed to be acceptable, an interested party may file, either orally before the hearing officer or in writing, a waiver of his right of appeal to the board and request early or immediate implementation of the initial decision. The board or

Proposed Regulations

hearing officer may grant the request for early or immediate implementation of the decision by causing issuance or surrender of the license and prompt entry of the appropriate order.

F. Timely review.

The board shall review the initial decision and may render a proposed decision, which may adopt, modify or reject the initial decision unless immediate implementation is ordered. In any event, the board shall issue notice of any proposed decision, along with notice of right to appeal, within the time provided for appeals as stated in Part II, § 2.1.

§ 1.8. Docket.

Cases will be placed upon the docket in the order in which they mature except that, for good cause shown or for reasons appearing to the board or to the ~~Director, Division of Hearings~~ *chief hearing officer*, the order may be varied.

§ 1.9. Evidence.

A. Generally.

All relevant and material evidence shall be received, except that:

1. The rules relating to privileged communications and privileged topics shall be observed; and
2. Secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a document is readily available the hearing officer shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence the more effort should be made to have the original document produced.

B. Cross-examination.

Subject to the provisions of subsection A of this section, any interested party shall have the right to cross-examine adverse witnesses and any agent or subordinate of the board whose report is in evidence and to submit rebuttal evidence except that:

1. Where the interested party is represented by counsel, only counsel shall exercise the right of cross-examination;
2. Where there is more than one interested party, only counsel or other representatives of such parties shall exercise the right of cross-examination; and
3. Where there is more than one group of interested parties present for the same purpose, only counsel or other representative of such groups shall exercise the

right of cross-examination. If the hearing officer deems it necessary, in order to expedite the proceedings, a merger of such groups shall be arranged.

C. Cumulative testimony.

The introduction of evidence which is cumulative, corroborative or collateral shall be avoided. The hearing officer may limit the testimony of any witness which is judged to be cumulative, corroborative or collateral; provided, however, the interested party offering such testimony may make a short avowal of the testimony which would be given and, if the witness asserts that such avowal is true, this avowal shall be made a part of the stenographic report.

D. Subpoenas, depositions and request for admissions.

Subpoenas, depositions de bene esse and requests for admissions may be taken, directed and issued in accordance with §§ ~~4-7(j)~~ 4.1-103 10 and 9-6.14:13 of the Code of Virginia.

E. Stenographic report.

All evidence, stipulations and argument in the stenographic report which are relevant to the matters in issue shall be deemed to have been introduced for the consideration of the board.

F. Stipulations.

Insofar as possible, interested parties will be expected to stipulate as to any facts involved. Such stipulations shall be made a part of the stenographic report.

§ 1.10. Hearings.

A. Hearings before the hearing officer shall be held, insofar as practicable, at the county seat of the county in which the establishment of the applicant or licensee is located, or, if the establishment be located within the corporate limits of any city then in such city. However, if it be located in a county or city within a metropolitan area in which the board maintains a hearing room in a district office, such hearings may be held in such hearing room. Notwithstanding the above, hearing officers may conduct hearings at locations convenient to the greatest numbers of persons in order to expedite the hearing process.

B. *At any hearing held by a hearing officer, any person hindering the orderly conduct or decorum of a the hearing shall be subject to penalty provided by law guilty of a violation of this regulation and shall be subject to the penalty prescribed by § 4.1-349 of the Code of Virginia .*

§ 1.11. Hearing officers.

A. Hearing officers are charged with the duty of

conducting fair and impartial hearings and of maintaining order in a form and manner consistent with the dignity of the board.

B. Each hearing officer shall have authority, subject to the published rules of the board and within its powers, to:

1. Administer oaths and affirmations;
2. Issue subpoenas as authorized by law;
3. Rule upon offers of proof and receive relevant and material evidence;
4. Take or cause depositions and interrogatories to be taken, directed and issued;
5. Examine witnesses and otherwise regulate the course of the hearing;
6. Hold conferences for the settlement or simplification of issues by consent of interested parties;
7. Dispose of procedural requests and similar matters;
8. Amend the issues or add new issues provided the applicant or licensee expressly waives notice thereof. Such waiver shall be made a part of the stenographic report of the hearing;
9. Submit initial decisions to the board and to other interested parties or their representatives; and
10. Take any other action authorized by the rules of the board.

§ 1.12. Interested parties.

As used in this regulation, "interested parties" shall mean the following persons:

1. The applicant;
2. The licensee;
3. Persons who would be aggrieved by a decision of the board; and
4. For purposes of appeal pursuant to Part II, § 2.1, interested parties shall be only those persons who appeared at and asserted an interest in the hearing before a hearing officer.

Where in these regulations reference is made to "licensee," the term likewise shall be applicable to a permittee or a designated manager to the extent that these regulations are not inconsistent with the statutes and regulations relating to such persons.

§ 1.13. Motions or requests.

Motions or requests for ruling made prior to the hearing before a hearing officer shall be in writing, addressed to the ~~Director, Division of Hearings~~ *Chief Hearing Officer, Administrative Hearings Section*, and shall state with reasonable certainty the ground therefor. Argument upon such motions or requests will not be heard without special leave granted by the hearing officer who will preside over the hearing.

§ 1.14. Notice of hearings.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, place and issues involved.

§ 1.15. Consent settlement.

A. Generally.

Disciplinary cases may be resolved by consent settlement if the nature of the proceeding and public interest permit. In appropriate cases, the chief hearing officer will extend an offer of consent settlement, conditioned upon approval by the board, to the licensee. The chief hearing officer is precluded from presiding over any case in which an offer of consent settlement has been extended.

B. Who may accept.

The licensee or his attorney may accept an offer of consent settlement. If the licensee is a corporation, only an attorney or an officer, director or majority stockholder of the corporation may accept an offer of consent settlement. Settlement shall be conditioned upon approval by the board.

C. How to accept.

The licensee must return the properly executed consent order along with the payment in full of any monetary penalty within 15 calendar days from the date of mailing by the board. Failure to respond within the time period will result in a withdrawal of the offer by the agency and a formal hearing will be held on the date specified in the notice of hearing.

D. Effect of acceptance.

Upon approval by the board, acceptance of the consent settlement offer shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and will result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The offer of consent settlement is not negotiable; however, the licensee is not precluded from submitting an offer in compromise under § 1.16 of this part.

E. Approval by the board.

The board shall review all proposed settlements. Only

Proposed Regulations

after approval by the board shall a settlement be deemed final. The board may reject any proposed settlement which is contrary to law or policy or which, in its sole discretion, is not appropriate.

F. Record.

Unaccepted offers of consent settlement will become a part of the record only after completion of the hearing process.

§ 1.16. Offers in compromise.

Following notice of a disciplinary proceeding a licensee may be afforded opportunity for the submission of an offer in compromise in lieu of suspension or in addition thereto, or in lieu of revocation of his license, where in the discretion of the board, the nature of the proceeding and the public interest permit. Such offer should be addressed to the secretary to the board. Upon approval by the board, acceptance of the offer in compromise shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and shall result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The reason for the acceptance of such an offer shall be made a part of the record of the proceeding. Unless good cause be shown, continuances for purposes of considering an offer in compromise will not be granted, nor will a decision be rendered prior to a hearing if received within three days of the scheduled hearing date, nor will more than two offers be entertained during the proceeding. Further, no offers shall be considered by the board if received more than 15 calendar days after the date of mailing of the initial decision or the proposed decision, whichever is later. An offer may be made at the appeal hearing, but none shall be considered after the conclusion of such hearing. The board may waive any provision of this section for good cause shown.

§ 1.17. Record.

A. The certified transcript of testimony, argument and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record of the initial decision.

B. Upon due application made to the ~~Director, Division of Hearings~~ *chief hearing officer*, copies of the record of a hearing shall be made available to parties entitled thereto at a fee established by the board.

§ 1.18. Rehearings.

A rehearing before a hearing officer shall not be held in any matter unless it be affirmatively shown that relevant and material evidence, which ought to produce an opposite result on rehearing, is available, is not merely cumulative, corroborative or collateral, and could not have been discovered before the original hearing by the use of ordinary diligence; provided, however, that the board, in

its discretion, may cause a rehearing to be held before a hearing officer in the absence of the foregoing conditions, as provided in Part II, § 2.6.

§ 1.19. Self-incrimination.

If any witness subpoenaed ~~at the instance to appear on behalf~~ of the board shall testify in a hearing before a hearing officer on complaints against a licensee ~~of the board~~ as to any violation in which the witness, as a licensee or an applicant, has participated, such testimony shall ~~in no case~~ not be used against him nor shall the board take any administrative action against him ~~as to the~~ for the offense to which he testifies.

§ 1.20. Subpoenas.

Upon request of any interested party, the ~~Director, Division of Hearings~~ *chief hearing officer*, or a hearing officer is authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents at a hearing before a hearing officer.

§ 1.21. Witnesses.

A. Interested parties shall arrange to have their witnesses present at the time and place designated for the hearing.

B. Upon request of any party entitled to cross-examine witnesses, as set forth in § 1.9 B of this regulation, the hearing officer may separate the witnesses, including agents of the board.

C. A person attending subpoenaed as a witness; ~~under a summons issued at the instance to appear on behalf of the board to testify in a hearing,~~ shall be entitled to the same allowance for expenses ~~and compensation~~ as witnesses for the Commonwealth in criminal cases.

§ 1.22. Informal conferences.

A. Waiver.

An informal conference will be conducted when an applicant for a license or a licensee who is the subject of a disciplinary proceeding does not waive its right to such a conference. A waiver may be verbal or in writing. Unless the parties are advised otherwise, the agency will automatically waive the informal conference when the applicant or licensee does so. When the applicant or licensee is offered an informal conference and fails to respond within 10 calendar days after the date of such offer, the informal conference will be deemed to be waived.

B. Procedures.

The informal conference will be conducted for the reasons set forth in § 9-6.14:11 of the Code of Virginia;

provided, however, inasmuch as the Code of Virginia continues to require that license suspension or revocation be preceded by a formal hearing (see § 4.1-227 of the Code of Virginia), the informal conference may not be used for purposes of agreement fixing a period of suspension or license revocation, although an offer of settlement shall be received for board consideration. The informal conference will serve as a vehicle to acquaint the interested party, in a general way, with the nature of the charges or objections, the evidence in support thereof and to hear any matters relevant thereto presented by the interested parties and to explore whether (i) administrative proceedings or objections should be terminated or (ii) the case should proceed to formal hearing and stipulations can be reached. The conference will be open to the public, but participation will be limited to the interested parties, their attorneys-at-law or other qualified representatives, and designated board representatives. The conference will be held, when practical, at the county or city in which the establishment of the applicant or licensee is located. Reasonable notice of administrative charges or objections and the date, time and place of the conference shall be given to the participants. The failure of the applicant or licensee to appear at a scheduled conference will be deemed a waiver of the informal conference. The informal proceeding will not be recorded. Sworn testimony will not be taken, nor will subpoenas be issued. At the conclusion of the informal conference, the designated board representative will complete a disposition form to be included in the case file or will announce the results at the beginning of the formal hearing to be included in the record.

§ 1.23. Agency representation.

The deputy department director for regulation or his designee may (i) represent the Division of Enforcement and Regulation before the board or any hearing officer; (ii) petition the board for modification of the hearing officer's decision; or (iii) request a ruling on other motions as may be necessary.

PART II. HEARINGS BEFORE THE BOARD.

§ 2.1. Appeals.

A. An interested party may appeal to the board an adverse initial decision, including the findings of fact and the conclusions, of a hearing officer or a proposed decision, or any portion thereof, of the board provided a request therefor in writing is received within 10 days after the date of mailing of the initial decision or the proposed decision, whichever is later.

B. At his option, an interested party may submit written exceptions to the initial or proposed decision within the 10-day period and waive further hearing proceedings.

C. If an interested party fails to appear at a hearing,

the board may proceed in his absence and render a decision.

§ 2.2. Attorneys; representation.

Any individual, partnership, association or corporation who is a licensee of the board or applicant for any license issued by the board or any interested party shall have the right to be represented by counsel at any board hearing for which he has received notice. The licensee, applicant or interested party shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine and question witnesses, present evidence on behalf of the corporation, draw conclusions and make arguments before the board.

§ 2.3. Communications.

Communications regarding appeal hearings upon licenses and applications for licenses should be addressed to the secretary of the board.

§ 2.4. Continuances.

Continuances will be granted as in actions at law. Requests for continuances of appeal hearings should be addressed to the secretary of the board.

§ 2.5. Decision of the board.

The final decision of the board, together with any written opinion, should be transmitted to each interested party or to his representative.

§ 2.6. Evidence.

A. Generally.

Subject to the exceptions permitted in this section, and to any stipulations agreed to by all interested parties, all evidence should be introduced at hearings before hearing officers.

B. Additional evidence.

Should the board determine at an appeal hearing, either upon motion or otherwise, that it is necessary or desirable that additional evidence be taken, the board may:

1. Direct that a hearing officer fix a time and place for the taking of such evidence within the limits prescribed by the board and in accordance with Part I, § 1.18;
2. Upon unanimous agreement of the board members permit the introduction of after-discovered or new evidence at the appeal hearing.

If the initial decision indicates that the qualifications of the establishment of an applicant or licensee are such as to cast substantial doubt upon the eligibility of the place

Proposed Regulations

for a license, evidence may be received at the appeal hearing limited to the issue involved and to the period of time subsequent to the date of the hearing before the hearing officer.

C. Board examination.

Any board member may examine a witness upon any question relevant to the matters in issue.

D. Cross-examination.

The right to cross-examine and the submission of rebuttal evidence as provided in Part I, § 1.9 shall be allowed in any appeal hearing where the introduction of additional evidence is permitted.

§ 2.7. Hearings.

Hearings before the board in the absence of notice to the contrary will be held in the office of the board, Virginia A.B.C. Building, 2901 Hermitage Road, Richmond, Virginia.

§ 2.8. Motions or requests.

Motions or requests for rulings, made after a hearing before a hearing officer and prior to an appeal hearing before the board, shall be in writing, addressed to the secretary to the board, and shall state with reasonable certainty the grounds therefor. Argument upon such motions or requests will not be heard without special leave granted by the board.

§ 2.9. Notice of hearing.

Reasonable notice of the time and place of an appeal hearing shall be given to each interested party who appeared at the initial hearing or his representative.

§ 2.10. Record.

A. The record of the hearing before the hearing officer, including the initial decision, and the transcript of testimony, argument and exhibits together with all papers and requests filed in the proceeding before the board, shall constitute the exclusive record for the final decision of the board.

B. Upon due application made to the secretary to the board, copies of the record, including the decision of the board and any opinion setting forth the reasons for the decision shall be made available to parties entitled thereto at a rate established by the board.

§ 2.11. Rehearings and reconsideration.

The board may, in its discretion for good cause shown, grant a rehearing or reconsideration on written petition of an interested party addressed to the Secretary to the Board and received within 30 days after the date of the

final decision of the board. The petition shall contain a full and clear statement of the facts pertaining to the grievance, the grounds in support thereof, and a statement of the relief desired. The board may grant such at any time on its own initiative for good cause shown.

§ 2.12. Scope of hearing.

A. Except as provided in § 2.6, the appeal hearing shall be limited to the record made before the hearing officer.

B. The provisions of Part I of this regulation shall be applicable to proceedings held under this part except to the extent such provisions are inconsistent herewith.

PART III. WINE AND BEER FRANCHISE ACTS.

§ 3.1. Complaints.

Complaints shall be referred in writing to the secretary of the board. The secretary's office, in consultation with the ~~Deputy for Regulation~~ *deputy department director for regulation*, will determine if reasonable cause exists to believe a violation of the Wine or Beer Franchise Acts, Chapters ~~2-1~~ (§ ~~4-118.3~~ et seq.) or ~~2-3~~ (§ ~~4-118.42~~ et seq.) Chapter 4 (§ 4.1-400 et seq.) or 5 (§ 4.1-500 et seq.) of Title 4, 4.1 of the Code of Virginia, has occurred, and, if so, a hearing on the complaint will be scheduled in due course. If no reasonable cause is found to exist, the complainant will be informed of the reason for that decision and given the opportunity to request a hearing as provided by statute.

§ 3.2. Hearings.

Hearings will be conducted in accordance with the provisions of Part I of this regulation. Further, the board and the hearing officers designated by it may require an accounting to be submitted by each party in determining an award of costs and attorneys' fees.

§ 3.3. Appeals.

The decision of the hearing officer may be appealed to the board as provided in Part II, § 2.1 of this regulation. Appeals shall be conducted in accordance with the provisions of Part II of this regulation.

§ 3.4. Hearings on notification of price increases.

Upon receipt from a winery, brewery or wine or beer importer of a request for notice of a price increase less than 30 days in advance, a hearing will be scheduled before the board, not a hearing officer, as soon as practicable with five days' notice to all parties which include at a minimum all the wholesalers selling the winery or brewery's product. There will be no continuances granted and the board must rule within 24 hours of the hearing.

§ 3.5. Discovery, prehearing procedures and production at hearings.

A. Introduction.

The rules in this section shall apply in all proceedings under the Beer and Wine Franchise Acts, Chapters 2-1 (§4-118.3 et seq.) and 2-3 (§ 4-118.42 et seq.) of Title 4 Wine and Beer Franchise Acts, Chapters 4 (§ 4.1-400 et seq.) and 5 (§ 4.1-500 et seq.) of Title 4.1 of the Code of Virginia, including arbitration proceedings when necessary pursuant to §§ 4-118.10 and 4-118.50 4.1-409 and 4.1-508 of the Code of Virginia.

No provision of any of the rules in this section shall affect the practice of taking evidence at a hearing, but such practice, including that of generally taking evidence ore tenus only at hearings before hearing officers, shall continue unaffected hereby.

B. Definitions.

The following words and terms, when used in this regulation, shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the Virginia Alcoholic Beverage Control Board and the officers, agents and employees of the board, including the secretary and the hearing officer(s), unless otherwise specified or unless the context requires otherwise.

"Commencement" of proceedings under this Part III of VR 125-01-1 means the date of the board's notice to the complainant(s) and the respondent(s), pursuant to § 3.1, that reasonable cause exists to believe that there has been a violation of either the Wine or Beer Franchise Acts.

"Manufacturer" means a winery or brewery, as those terms are defined in §§ 4-118.43 4.1-401 and 4-118.4 4.1-500 , respectively, of the Code of Virginia.

"Person" means a winery, brewery, importer or wholesaler, as well as those entities designated as "persons," within the meaning of §§ 4-118.43 4.1-401 and 4-118.4 4.1-500 of the Code of Virginia.

"Secretary" means the Secretary of to the Virginia Alcoholic Beverage Control Board.

C. General provisions governing discovery.

1. Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the board orders otherwise under subdivision 3 of this subsection or subdivision 1 of subsection P, the frequency of use of these methods is

not limited.

2. Scope of discovery. Unless otherwise limited by order of the board in accordance with this § 3.5, the scope of discovery is as follows:

a. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

b. Applicability. Discovery as provided under this § 3.5 shall apply to all proceedings or hearings of Wine or Beer Franchise Act cases while pending before hearing officers or arbitrators. Discovery under this section shall not be authorized during the course of appeals to the board, unless the board has first granted leave to proceed with additional discovery.

c. Hearing preparation: materials. Subject to the provisions of subdivision 2 d of this subsection , a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision 2 a of this subsection and prepared in anticipation of litigation or for the hearing by or for another party or by or for that other party's representative (including his attorney, consultant, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the board shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the proceeding or its subject matter previously made by that party. For purposes of this subdivision, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

Proposed Regulations

d. Hearing preparation: experts; costs. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision 2 a of this subsection and acquired or developed in anticipation of litigation or for the hearing, may be obtained only as follows:

(1) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; (ii) upon motion, the board may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision 2 d (3) of this subsection, concerning fees and expenses as the board may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for the hearing and who is not expected to be called as a witness at the hearing, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (i) the board shall require that the party seeking discovery pay the expert a reasonable fee for time spent and his expenses incurred in responding to discovery under subdivisions d(1)(ii) and d(2) of this subsection; and (ii) with respect to discovery obtained under subdivision d(1)(ii) of this subsection the board may require, and with respect to discovery obtained under subdivision d(2) of this subsection the board shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

3. Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (i) that the discovery not be had; (ii) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (iii) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (iv) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (v) that discovery be conducted with no one present except persons

designated by the board; (vi) that a deposition after being sealed be opened only by order of the board; (vii) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (viii) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the board.

If the motion for a protective order is denied in whole or in part, the board may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of subdivision 1 d of subsection O apply to the award of expenses incurred in relation to the motion.

4. Sequence and timing of discovery. Unless the board upon motion, or pursuant to subsection N of this section, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

5. Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired except as follows:

a. A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

b. A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

c. A duty to supplement responses may be imposed by order of the board, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

6. Service under this part. Except for the service of the notice required under subdivision D 1 b of this section, any notice or document required or permitted to be served under this section by one party upon another shall be served as provided in Rule 1:12 of the Rules of the Supreme Court of Virginia. Any notice or document required or permitted to be served

under this section by the board upon one or more parties shall be served as provided in §§ 1.7, 1.14, 2.5 or 2.9 of Parts I and II of VR 125-01-1.

7. Filing. Any request for discovery under this section and the responses thereto, if any, shall be filed with the secretary of the board except as otherwise herein provided.

(Ref: Rule 4:1, Rules of Virginia Supreme Court.)

D. Depositions before proceeding or pending appeal.

1. Before proceeding.

a. Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable before the board under this section may file a verified petition before the board. The petition shall be entitled in the name of the petitioner and shall show: (i) that the petitioner expects to be a party to a proceeding under this part but is presently unable to bring it or cause it to be brought; (ii) the subject matter of the expected action and his interest therein; (iii) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (iv) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (v) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

b. Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the board, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice shall be served in the manner provided in §§ 1.14 or 2.9 of Parts I and II of VR 125-01-1; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the board may make such order as is just for service by publication or otherwise.

c. Order and examination. If the board is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with this section. The attendance of witnesses may be compelled by subpoena, and the board may make orders of the

characters provided for by subsection M of this section.

d. Cost. The cost of such depositions shall be paid by the petitioner, except that the other parties in interest who produce witnesses on their behalf or who make use of witnesses produced by others shall pay their proportionate part of the cost of the transcribed testimony and evidence taken or given on behalf of each of such parties.

e. Filing. The depositions shall be certified as prescribed in subsection G of this section and then returned to and filed by the secretary.

f. Use of deposition. If a deposition to perpetuate testimony is taken under these provisions or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any proceeding involving the same subject matter subsequently brought before the board pursuant to Part III of these regulations in accordance with the provisions of subsection C of this section.

2. Pending appeal. If an appeal has been taken from a ruling of the board or before the taking of an appeal if any time therefor has not expired and for good cause shown, the board may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings. In such case the party who desires to perpetuate the testimony may make a motion before the board for leave to take the depositions, upon the same notice and service thereof as if the proceeding was pending therein. The motion shall show (i) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; and (ii) the reasons for perpetuating their testimony. If the board finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make orders of the character provided for by subsection M of this section and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this section for depositions taken in pending actions.

3. Perpetuation of testimony. This subsection D provides the exclusive procedure to perpetuate testimony before the board.

(Ref: Rule 4:2, Rules of Virginia Supreme Court.)

E. Persons before whom depositions may be taken.

1. Within this Commonwealth. Within this Commonwealth depositions under this section may be taken before any person authorized by law to administer oaths, and if certified by his hand may be received without proof of the signature to such certificate.

Proposed Regulations

2. Within the United States. In any other state of the United States or within any territory or insular possession subject to the dominion of the United States, depositions under this section may be taken before any officer authorized to take depositions in the jurisdiction wherein the witness may be, or before any commissioner appointed by the Governor of this Commonwealth.

3. No commission necessary. No commission by the Governor of this Commonwealth shall be necessary to take a deposition under this section whether within or without this Commonwealth.

4. In foreign countries. In a foreign state or country depositions under this section shall be taken (i) before any American minister plenipotentiary, charge d'affaires, secretary of embassy or legation, consul general, consul, vice-consul, or commercial agent of the United States in a foreign country, or any other representative of the United States therein, including commissioned officers of the armed services of the United States, or (ii) before the mayor, or other magistrate of any city, town or corporation in such country, or any notary therein.

5. Certificate when deposition taken outside Commonwealth. Any person before whom a deposition under this section is taken outside this Commonwealth shall certify the same with his official seal annexed; and, if he has none, the genuineness of his signature shall be authenticated by some officer of the same state or country, under his official seal, except that no seal shall be required of a commissioned officer of the armed services of the United States, but his signature shall be authenticated by the commanding officer of the military installation or ship to which he is assigned.

(Ref: Rule 4:3, Rules of Virginia Supreme Court.)

F. Stipulations regarding discovery.

Unless the board orders otherwise, the parties may by written stipulation (i) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions and (ii) modify the procedures provided by these rules for other methods of discovery. Such stipulations shall be filed with the deposition.

(Ref: Rule 4:4, Rules of Virginia Supreme Court.)

G. Depositions upon oral examination.

1. When depositions may be taken. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon

such terms as the board prescribes, subject to any authorization and limitations that may be imposed by any court within the Commonwealth.

2. Notice of examination. General requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization.

a. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the proceeding. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

b. (Reserved)

c. The board may for cause shown enlarge or shorten the time for taking the deposition.

d. (Reserved)

e. The notice to a party deponent may be accompanied by a request made in compliance with subsection M of this section for the production of documents and tangible things at the taking of the deposition. The procedure of subsection M of this section shall apply to the request.

f. A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized in this section.

g. The parties may stipulate in writing or the board may on motion order that a deposition be taken by telephone. A deposition taken by telephone shall be taken before an appropriate officer in the locality where the deponent is present to answer questions propounded to him.

3. Examination and cross-examination; record of examination; oath; objections. Examination and cross-examination of witnesses may proceed as

permitted at the hearing. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means authorized by this section. If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examinations, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

4. Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the board may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision C 3 of this section. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the board. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of subdivision O 1 d apply to the award of expenses incurred in relation to the motion.

5. Submission to witness; changes; signing. When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in forms or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under subdivision J 4 d of this section the board holds that the reasons given for the refusal to sign require

rejection of the deposition in whole or in part.

6. Certification and filing by officer; exhibits; copies; notice of filing.

a. The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then lodge it with the attorney for the party who initiated the taking of the deposition, notifying the secretary of the board and all parties of such action. Depositions taken pursuant to this subsection G or subsection H shall not be filed with the secretary until the board so directs, either on its own initiative or upon the request of any party prior to or during the hearing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the board, pending final disposition of the case.

b. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

c. The party taking the deposition shall give prompt notice of its filing to all other parties.

7. Failure to attend or to serve subpoena; expenses.

a. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the board may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

b. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the board

Proposed Regulations

may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(Ref: Rule 4:5, Rules of Virginia Supreme Court.)

H. Deposition upon written questions.

1. Serving questions; notice. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon such terms as the board prescribes subject to any authorization and limitations that may be required or imposed by any court within the Commonwealth.

A party desiring to take the deposition upon written questions shall serve them upon every other party with a notice stating that (i) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (ii) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of subdivision G 2 f of this section.

Within 21 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The board may for cause shown enlarge or shorten the time.

2. Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by subdivisions 3, 4 and 5 of subsection G of this section, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

3. Notice of filing. When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

(Ref: Rule 4:6, Rules of Virginia Supreme Court.)

I. Limitation on depositions.

No party shall take the deposition of more than five

witnesses for any purpose without leave of the board for good cause shown.

(Ref: Rule 4:6A, Rules of Virginia Supreme Court.)

J. Use of depositions in proceedings under the Beer and Wine Wine and Beer Franchise Acts.

1. Use of depositions. At the hearing or upon the hearing of a motion, or during an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

a. (Reserved)

b. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

c. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H of this section to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

d. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the board finds: (i) that the witness is dead; or (ii) that the witness is at a greater distance than 100 miles from the place of hearing, or is out of this Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) that the witness is a judge, or is in any public office or service the duties of which prevent his attending hearings before the board provided, however, that if the deponent is subject to the jurisdiction of the board, the board may, upon a showing of good cause or sua sponte, order him to attend and to testify *ore tenus*; or (vi) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally, to allow the deposition to be used.

e. If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any

party may introduce any other parts.

f. No deposition shall be read in any proceeding against a person under a disability unless it be taken in the presence of the guardian ad litem appointed or attorney serving pursuant to § 8.01-9 of the Code of Virginia, or upon questions agreed on by the guardian or attorney before the taking.

g. In any proceeding, the fact that a deposition has not been offered in evidence prior to an interlocutory decree or order shall not prevent its thereafter being so offered except as to matters ruled upon in such interlocutory decree or order, provided, however, that such deposition may be read as to matters ruled upon in such interlocutory decree or order if the principles applicable to after-discovered evidence would permit its introduction.

Substitution of parties does not affect the right to use depositions previously taken; and when there are pending before the board several proceedings between the same parties, depending upon the same facts, or involving the same matter of controversy, in whole or in part, a deposition taken in one of such proceedings, upon notice to the same party or parties, may be read in all, so far as it is applicable and relevant to the issue; and, when an action in any court of the United States or of this or any other state has been dismissed and a proceeding before the board involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the one action may be used in a proceeding before the board as if originally taken therefor.

2. Objections to admissibility. Subject to the provisions of subdivision 4 c of this subsection, objection may be made at the hearing to receive in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

3. Effect of taking or using depositions. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision 1 c of this subsection. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

4. Effect of errors and irregularities in depositions.

a. As to notice. All errors and irregularities in the

notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

b. As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

c. As to taking of deposition.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions and answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written questions submitted under subsection H of this section are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

d. As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under subsections G and H of this section are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

5. (Reserved)

6. Record. Depositions shall become a part of the record only to the extent that they are offered in evidence.

(Ref: Rule 4:7, Rules of Virginia Supreme Court.)

K. Audio-visual depositions.

1. When depositions may be taken by audio-visual means. Any depositions permitted under these rules may be taken by audio-visual means as authorized by

Proposed Regulations

and when taken in compliance with law.

2. Use of clock. Every audio-visual deposition shall be timed by means of a timing device, which shall record hours, minutes and seconds which shall appear in the picture at all times during the taking of the deposition.

3. Editing. No audio-visual deposition shall be edited except pursuant to a stipulation of the parties or pursuant to order of the board and only as and to the extent directed in such order.

4. Written transcript. If an appeal is taken in the case, the appellant shall cause to be prepared and filed with the secretary a written transcript of that portion of an audio-visual deposition made a part of the record at the hearing to the extent germane to an issue on appeal. The appellee may designate additional portions to be so prepared by the appellant and filed.

5. Use. An audio-visual deposition may be used only as provided in subsection J of this section.

6. Submission, etc. The provisions of subdivision G 5 shall not apply to an audio-visual deposition. The other provisions of subsection G of this section shall be applicable to the extent practicable.
(Ref: Rule 4:7A, Rules of Virginia Supreme Court.)

L. Interrogatories to parties.

1. Availability; procedures for use. Upon the commencement of any proceedings under this part, any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.

2. Form. The party serving the interrogatories shall leave sufficient space between each interrogatory so as to permit the party answering the interrogatories to make a photocopy of the interrogatories and to insert the answers between each interrogatory. The party answering the interrogatories shall use a photocopy to insert answers and shall precede the answer with the word "Answer." In the event the space which is left to fully answer any interrogatory is insufficient, the party answering shall insert the words, "see supplemental sheet" and shall proceed to answer the interrogatory fully on a separate sheet or sheets of paper containing the heading "Supplemental Sheet" and identify the answers by reference to the number of the interrogatory. The party answering the interrogatories shall prepare a separate sheet containing the necessary oath to the answers, which shall be attached to the answers filed with the court to the copies sent to all parties and shall contain a certificate of service.

3. Filing. The interrogatories and answers and objections thereto shall not be filed in the office of the secretary unless the board directs their filing on its own initiative or upon the request of any party prior to or during the hearing. For the purpose of any consideration of the sufficiency of any answer or any other question concerning the interrogatories, answers or objections, copies of those documents shall be made available to the board by counsel.

4. Answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 21 days after the service of the interrogatories. The board may allow a shorter or longer time. The party submitting the interrogatories may move for an order under subdivision O 1 with respect to any objection to or other failure to answer an interrogatory.

5. Scope; use. Interrogatories may relate to any matters which can be inquired into under subdivision C 2, and the answers may be used to the extent permitted by the rules of evidence. Only such interrogatories and the answers thereto as are offered in evidence shall become a part of the record.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

6. Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

7. Limitation on interrogatories. No party shall serve upon any other party, at any one time or cumulatively, more than 30 written interrogatories, including all parts and subparts without leave of the

board for good cause shown.

(Ref: Rule 4:8, Rules of Virginia Supreme Court.)

M. Production of documents and things and entry on land for inspection and other purposes; production at the hearing.

1. Scope. Any party may serve on any other party a request (i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, any tangible things which constitute or contain matters within the scope of subdivision 2 of subsection C and which are in the possession, custody, or control of the party upon whom the request is served; or (ii) to produce any such documents to the board at the time of the hearing; or (iii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, surveying, and photographing the property or any designated object or operation thereon, within the scope of subdivision C 2 of this section.

When the physical condition or value of a party's plant, equipment, inventory or other tangible asset is in controversy, the board, upon motion of an adverse party, may order a party to submit same to physical inventory or examination by one or more representatives of the moving party named in the order and employed by the moving party. The order may be made only by agreement or on motion for relevance shown and upon notice to all parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

2. Procedure. The request may, without leave of the board, except as provided in subdivision 4 of ~~this subsection~~, be served after commencement of the proceeding. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, period and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 21 days after the service of the request. The board may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

The party submitting the request may move for an order under subdivision O 1 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

3. Production by a person not a party. Upon written request therefor filed with the secretary by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been mailed or delivered to counsel of record and to parties having no counsel, the secretary shall, subject to subdivision 4 of ~~this subsection~~, issue a person not a party therein a subpoena which shall command the person to whom it is directed, or someone acting on his behalf, to produce the documents and tangible things (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy any tangible things which constitute or contain matters within the scope of subdivision C 2 which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena; but, the board, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the documents and tangible things so designated and described.

Documents subpoenaed pursuant to this subdivision shall be returnable only to the office of the secretary unless counsel of record agree in writing filed with the secretary as to a reasonable alternative place for such return. Upon request of any party in interest, or his attorney, the secretary shall permit the withdrawal of such documents by such party or his attorney for such reasonable period of time as will permit his inspection, photocopying, or copying thereof.

4. Certain officials. No request to produce made pursuant to subdivision 2 of ~~this subsection~~ shall be served, and no subpoena provided for in subdivision 3 of ~~this subsection~~ shall issue, until prior order of the board is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any ambassador or consul; or any military officer on active duty holding the rank of

Proposed Regulations

admiral or general.

5. Proceedings on failure or refusal to comply. If a party fails or refuses to obey an order made under subdivision 2 of this subsection, the board may proceed as provided by subsection O.

6. Filing. Requests to a party pursuant to subdivisions 1 and 2 of this subsection shall not be filed in the office of the secretary unless requested in a particular case by the board or by any party prior to or during the hearing.

(Ref: Rule 4:9, Rules of Virginia Supreme Court.)

N. Requests for admission.

1. Request for admission. Upon commencement of any proceedings under this part, a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of subdivision C 2 set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 21 days after service of the request, or within such shorter or longer time as the board may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; he may, subject to the provisions of subdivision O 3, deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the board determines that an

objection is justified, it shall order that an answer be served. If the board determines that an answer does not comply with the requirements of this subsection N, it may order either that the matter is admitted or that an amended answer be served. The board may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to the hearing. The provisions of subdivision 1 d of subsection O apply to the award of expenses incurred in relation to the motion.

2. Effect of admission. Any matter admitted under this rule is conclusively established unless the board on motion permits withdrawal or amendment of the admission. Subject to the provisions of subsection P governing amendment of a prehearing order, the board may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the board that withdrawal of amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

3. Filing. Requests for admissions and answers or objections shall be served and filed as provided in subsection L.

4. Part of record. Only such requests for admissions and the answers thereto as are offered in evidence shall become a part of the record.

(Ref: Rule 4:11, Rules of Virginia Supreme Court.)

O. Failure to make discovery: sanctions.

1. Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply to the board for an order compelling discovery as follows:

a. (Reserved)

b. Motion. If a deponent fails to answer a question propounded or submitted under subsections G and H, or a corporation or other entity fails to make a designation under subdivision 2 f of subsection G and subdivision 1 of subsection H, or a party fails to answer an interrogatory submitted under subsection L, or if a party, in response to a request for inspection submitted under subsection M, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition or oral examination, the proponent of the question may

complete or adjourn the examination before he applies for an order.

If the board denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subdivision 3 of subsection C.

c. Evasive or incomplete answer. For purposes of this subsection an evasive or incomplete answer is to be treated as a failure to answer.

d. Award of expenses of motion. If the motion is granted and the board finds that the party whose conduct necessitated the motion acted in bad faith, the board shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees.

If the motion is denied and the board finds that the moving party acted in bad faith in making the motion, the board shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees.

If the motion is granted in part and denied in part, the board may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

2. Failure to comply with order.

a. Suspension or revocation of licenses, monetary penalties. Failure to comply with any order of the board under this § 3.5 (Discovery) shall constitute grounds for action by the board under § 4-37 A(1)(b) 4.1-225 1 c of the Code of Virginia.

b. Sanctions by the board. If a party or an officer, director, or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision 1 of this subsection, the board may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party

to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part thereof, or rendering a judgment or decision by default against the disobedient party.

In lieu of any of the foregoing orders or in addition thereto, if the board finds that a party acted in bad faith in failing to obey an order to provide or permit discovery, the board shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure.

3. Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under subsection N, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the board for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The board shall make the order if it finds that the party failing to admit acted in bad faith. A party will not be found to have acted in bad faith if the board finds that (i) the request was held objectionable pursuant to subdivision 1 of subsection N, or (ii) the admission sought was of no substantial importance, or (iii) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (iv) there was other good reason for the failure to admit.

4. Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails (i) to appear before the officer who is to take his deposition, after being served with a proper notice, or (ii) to serve answers or objections to interrogatories submitted under subsection L, after proper service of the interrogatories, or (iii) to serve a written response to the request for inspection submitted under subsection M, after proper service of the request, the board on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions 2 b(1), 2 b(2) and 2 b(3) of this subsection. In lieu of any order or in addition thereto, if the board finds that a party in bad faith failed to act, the board shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the board finds that the failure was substantially justified or that other circumstances make an award of expenses

Proposed Regulations

unjust.

The failure to act described in this subsection may not be excused merely on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subdivision 3 of subsection C.

(Ref: Rule 4:12, Rules of Virginia Supreme Court.)

P. Prehearing procedure; formulating issues.

1. The hearing officer(s) or the board, may in his or its discretion direct the attorneys for the parties to appear before such hearing officer(s) or the board for a conference to consider;

- a. A determination or clarification of the issues;
- b. A plan and schedule of discovery;
- c. Any limitations on the scope and methods of discovery, including deadlines for the completions of discovery;
- d. The necessity or desirability of amendments to the pleadings;
- e. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, as well as obtaining stipulations as to the evidence;
- f. The limitation of the number of expert witnesses;
- g. The possibility of filing bills of particulars and grounds of defense by the respective parties; and
- h. Such other matters as may aid in the disposition of the action.

2. The hearing officer(s) or the board, shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(Ref: Rule 4:13, Rules of Virginia Supreme Court.)

Q. Disposition of discovery material.

Any discovery material not admitted in evidence filed in the secretary's office may be destroyed by the secretary after one year after entry of the final order or decision. But if the proceeding is the subject of an appeal, such material shall not be destroyed until the lapse of one year after receipt of the decision or mandate on appeal or the entry of any final judgment or decree thereafter.

R. Interlocutory appeals to the board.

If any party to a proceeding under Part III of VR 125-01-1 is aggrieved by a decision or order of the hearing officer(s) relating to discovery or other matters contained in this section, such aggrieved party may appeal such interlocutory decision or order to the board pursuant to VR 125-01-1, Part III, § 2.1.

(Ref: Rule 4:14, Rules of Virginia Supreme Court.)

PART IV. TELEPHONE HEARINGS.

§ 4.1. Applicability.

The board and its hearing officers may conduct hearings by telephone only when the applicant/licensee expressly waives the in-person hearing. The board will determine whether or not certain hearings might practically be conducted by telephone. The provisions of Part I shall apply only to Part IV where applicable.

§ 4.2. Appearance.

The interested parties will be expected to be available by telephone at the time set for the hearing and may produce, under oath, evidence relevant and material to the matters in issue. The board will arrange for telephone conference calls at its expense.

§ 4.3. Argument.

Oral or written argument may be submitted to and limited by the hearing officer. Oral argument is to be included in the stenographic report of the hearing. Written argument, if any, must be submitted to the hearing officer and other interested parties in advance of the hearing.

§ 4.4. Documentary evidence.

Documentary evidence, which an interested party desires to be considered by the hearing officer, must be submitted to the hearing officer and other interested parties in advance of the hearing.

§ 4.5. Hearings.

A. Telephone hearings will usually originate from the central office of the board in Richmond, Virginia, but may originate from other locations. Interested parties may participate from the location of their choice where a telephone is available. If an interested party is not available by telephone at the time set for the hearing, the hearing may be conducted in his absence.

B. If at any time during a telephone hearing the hearing officer determines that the issues are so complex that a fair and impartial hearing cannot be accomplished, the hearing officer shall adjourn the telephone hearing and reconvene an in-person hearing as soon as practicable.

§ 4.6. Notice of hearing.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, issues involved, and the telephone number where the applicant/licensee can be reached.

§ 4.7. Witnesses.

Interested parties shall arrange to have their witnesses present at the time designated for the telephone hearing, or should supply a telephone number where the witnesses can be reached, if different from that of the interested party.

PART V. PUBLIC PARTICIPATION GUIDELINES FOR ADOPTION OR AMENDMENT OF REGULATIONS.

§ 5.1. Public participation guidelines in regulation development; applicability; initiation of rulemaking; rulemaking procedures.

A. Applicability.

These guidelines shall apply to all regulations subject to the Administrative Process Act which are administered by the Department of Alcoholic Beverage Control, except as provided in subsection G of this section.

B. Initiation of rulemaking (Step 1).

The board shall publish notice of the commencement or initiation of any rulemaking process. Rulemaking procedures may be initiated at any time by the board but shall be initiated at least once each calendar year. At the commencement of any rulemaking process, the board may invite proposals for regulations or regulation changes from any interested person or may limit the process to selected proposals. All initial proposals to be considered shall be in the form of a written petition for the adoption, amendment or repeal of any regulation. Petitions shall be filed with the board within any time limitation as may be specified by the board. A petition may be submitted at any time, by any person, but it shall be at the board's discretion to initiate rulemaking procedures as a result of such petition or petitions. ~~Any petition not considered may be deferred until the next rulemaking process. All petitions shall be considered and responded to within 180 days.~~ Each petition shall contain the following information, if available:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. General description of proposal, with recommendations for adoption, amendment or repeal of specific regulation(s);
4. Why is change needed? What problem is it meant to address?;

5. What is the anticipated effect of not making the change?;

6. Estimated costs or savings, or both, to regulated entities, the public, or others incurred by this change as compared to current regulations;

7. Who is affected by recommended change? How affected?;

8. Draft language; and

9. Supporting documents.

C. Notices - in general.

1. Mailing list. The secretary to the board in conjunction with the deputy *department* director for regulation shall prepare a general mailing list of those persons and organizations who have demonstrated an interest in specific regulations in the past through the filing of petitions, written comments or attendance at public hearings. The mailing list will be updated at least every two years, and a current copy will be on file in the office of the secretary to the board. Periodically, but not less than every two years, the board shall publish in the Virginia Register, in a newspaper published and of general circulation in the City of Richmond, and in such other newspapers in ~~Virginia~~ *the Commonwealth* as the board may determine, a request that any individual or organization interested in participating in the development of specific rules and regulations so notify the board. Any persons or organizations identified in this process will be placed on the general mailing list.

2. Notice to listed persons. Each person on the general mailing list shall be sent, by U.S. mail, a copy of all notices pertaining to rulemaking for the board as are published in the Virginia Register. In lieu of such copy, the board may notify those on the mailing list of the publication of the notice and, if lengthy, offer to forward a copy upon payment of reasonable costs for copying and mailing.

D. Initial requirement for public comment; participation in regulation development; ad hoc panels; public meetings (Step 2).

1. Notice of Intended ~~Regulation~~ *Regulatory* Action. The board shall solicit comments, data, views and argument from the public as to each regulation proposal and shall encourage participation of interested persons in the development of regulations and draft language. As to each petition or proposal, the board shall publish a Notice of Intended Regulatory Action. The notice shall specify the date, time and place of any public meeting to consider the proposals, either with or without an ad hoc advisory panel, *or with or without consultation with groups and individuals who have expressed an interest in*

Proposed Regulations

participating in the development of specific rules and regulations and shall contain the following information:

- a. Subject of the proposed action;
- b. Identification of the entities that will be affected;
- c. Discussion of the purpose of the proposed action and the issues involved;
- d. Listing of applicable laws or regulations;
- e. Name of individual, group or entity proposing regulation;
- f. Request for comments, data, views or argument from interested parties, either orally or in writing, to the board or its specially designated subordinate ;
- g. Notification of date, time and place of any scheduled public meeting on the proposal; and
- h. Name, address and telephone number of staff person to be contacted for further information.

2. The board shall disseminate the Notice of Intended Regulation Regulatory Action to the public via:

- a. Publication in The Virginia Register of Regulations;
- b. Distribution by mail to persons on the general mailing list pursuant to subsection C; and
- c. Press release to media throughout the Commonwealth if a public meeting is scheduled.

3. The board may form an ad hoc advisory panel or consult with groups and individuals who have expressed an interest in participating in the development of specific rules and regulations to consider regulation proposals to make recommendations, assist in development of draft language, and provide such advice as the board may request. The board may direct request the panel or interested groups and individuals to participate in a public meeting to develop or consider regulation proposals.

The board's use of ad hoc advisory panels or consultation with interested groups and individuals shall be based on, but not limited to, the following criteria: The proposed regulation's:

- a. Complexity;
- b. Controversy;
- c. Degree of substantive change;
- d. Impact on the board, its licensees, and the public;

or

e. Enactment required by state or federal mandate.

4. The board may conduct a regulation development public meeting to receive views and comments and answer questions of the public.

E. Notice of public hearing and publication of proposals pursuant to § 9-6.14:7.1 C of the Virginia Administrative Process Act (Step 3).

1. The board shall consider the comments, recommendations, reports and other input from the public, industry and other interested persons received during the initial steps of public participation in the regulation development process, including comments, views, data and argument received during any public meeting, before publishing a final proposed draft regulation and initiating the proceedings required by the Administrative Process Act.

2. The board shall comply with the notice, publication and other requirements of § 9-6.14:7.1, and final proposed drafts to adopt, amend or repeal regulations, together with any other required statements, shall be published in the Virginia Register, in a newspaper published and of general circulation in the City of Richmond, and in such other newspapers in Virginia the Commonwealth as the board may determine. In addition, the board shall comply with the provisions of subdivision C 2 above . Such notice shall solicit comments, views, data and argument from the public and shall specify the date, time and place of any scheduled public hearing to consider adoption of such regulation proposals.

F. Public hearing (Step 4).

The board shall conduct a public hearing to consider adoption of all proposed regulations. At such hearing, the board may receive and consider such additional written and verbal comment as it deems appropriate prior to any final vote.

G. Notwithstanding the foregoing provisions, the board may elect to dispense with any required public participation or other required procedure to the extent authorized by the Virginia Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

VA.R. Doc. No. R94-33; Filed September 24, 1993, 11:40 a.m.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Informal Conference Disposition

IN THE MATTER OF:

APPLICATION FOR:

An informal conference was conducted by _____
(Person)
_____ on _____ in _____
(Title) (Date) (Locality)

to consider the objections stated in the Application
Investigation Report dated _____.

This conference resulted in the following disposition:

- Case should be scheduled for formal hearing.
- Withdrawal of the objection(s) and issuance of the license effective _____. State any conditions or restrictions here:

Withdrawal of the application

Seen and Agreed to: _____ Date _____
Objectors

_____ Date _____
Applicant

Signed: _____ Date _____
Person Presiding

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Waiver of Informal Conference

IN THE MATTER OF:

DISCIPLINARY _____ APPLICATION _____

(Number)

The licensee/applicant knowingly and voluntarily waives its right to an informal conference. When the formal hearing is scheduled, all parties will be provided with notice of the date, time and place of hearing.

Seen and Agreed to : _____ Date _____
Licensee/Applicant
(Print Name)

Signed: _____ Date _____
(Representative of Agency)
(Print Name)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD
RICHMOND
August 20, 1993

NOTICE OF INFORMAL CONFERENCE/HEARING BEFORE HEARING OFFICER

IN THE MATTER OF APPLICANT NAME-
TRADE NAME-
ADDRESS-
CITY, ST-

APPLICATION FOR TYPE OF LICENSE-

The Board, based upon an investigative report received from the Division of Enforcement and Regulations, alleges the following objection(s):

- 1. Objection-

Unless waived, an informal conference will be conducted immediately prior to the formal hearing. The conference will be held to discuss the objection(s) and to reach any possible stipulations. The investigative report, procedural regulations, and a written explanation of those regulations are enclosed. In the absence of a demand for amplification or some objection, the Board anticipates these documents may serve to fulfill the Board's obligation under Section 9-6.14:11(iii) and (v) of the Administrative Process Act.

The Board, through a Hearing Officer, will conduct the formal proceeding to determine whether the license should be granted as is required by Section 4-98.9. The informal conference and formal hearing will be held on date, time, and location-

You will be afforded an opportunity to present evidence in your behalf and you may be represented by an attorney, if you so desire.

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD
BY _____
Chief Hearing Officer
Michael J. Oglesby

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD
RICHMOND
August 20, 1993

NOTICE OF INFORMAL CONFERENCE/HEARING BEFORE HEARING OFFICER

IN THE MATTER OF NAME-
TRADE NAME-
ADDRESS-
CITY, ST-

LICENSE NO. NUMBER-

The Board, based upon an investigative report received from the Division of Enforcement and Regulations, alleges the following charge(s):

- 1. charge-

Unless waived, an informal conference will be conducted immediately prior to the formal hearing. The conference will be held to discuss the charge(s) and to reach any possible stipulations. The investigative report, procedural regulations, and a written explanation of those regulations are enclosed. In the absence of a demand for amplification or some objection, the Board anticipates these documents may serve to fulfill the Board's obligation under Section 9-6.14:11(iii) and (v) of the Administrative Process Act.

The Board, through a Hearing Officer, will conduct the formal proceeding to determine whether any disciplinary action should be taken against your license as is required by Section 4-98.9 of the Code of Virginia. The informal conference and formal hearing will be held on date, time and location.-

You will be afforded an opportunity to present evidence in your behalf and you may be represented by an attorney, if you so desire.

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD
BY _____
Chief Hearing Officer
Michael J. Oglesby

WJB

WJB

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD
RICHMOND
August 20, 1993

NOTICE OF INFORMAL CONFERENCE/HEARING BEFORE HEARING OFFICER

IN THE MATTER OF NAME-
 TRADE NAME-
 ADDRESS-
 CITY, ST-

LICENSE NO. NUMBER-

The Board, based upon an investigative report received from the Division of Enforcement and Regulations, alleges the following charge(s):

- 1. charge-

Unless waived, an informal conference will be conducted immediately prior to the formal hearing. The conference will be held to discuss the charge(s) and to reach any possible stipulations. The investigative report, procedural regulations, and a written explanation of those regulations are enclosed. In the absence of a demand for amplification or some objection, the Board anticipates these documents may serve to fulfill the Board's obligation under Section 9-6.14:11(iii) and (v) of the Administrative Process Act.

The Board, through a Hearing Officer, will conduct the formal proceeding to determine whether any disciplinary action should be taken against your license as is required by Section 4-37.B of the Code of Virginia. The informal conference and formal hearing will be held on date, time and location.-

You will be afforded an opportunity to present evidence in your behalf and you may be represented by an attorney, if you so desire.

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

BY _____
 Chief Hearing Officer
 Michael J. Oglesby

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD
RICHMOND
August 20, 1993

NOTICE OF INFORMAL CONFERENCE/HEARING BEFORE HEARING OFFICER

IN THE MATTER OF APPLICANT NAME-
 TRADE NAME-
 ADDRESS-
 CITY, ST-

APPLICATION FOR TYPE OF LICENSE-

The Board, based upon an investigative report received from the Division of Enforcement and Regulations, alleges the following objection(s):

- 1. objection-

Unless waived, an informal conference will be conducted immediately prior to the formal hearing. The conference will be held to discuss the objection(s) and to reach any possible stipulations. The investigative report, procedural regulations, and a written explanation of those regulations are enclosed. In the absence of a demand for amplification or some objection, the Board anticipates these documents may serve to fulfill the Board's obligation under Section 9-6.14:11(iii) and (v) of the Administrative Process Act.

The Board, through a Hearing Officer, will conduct the formal proceeding to determine whether the license should be granted as is required by Section 4-31.B. The informal conference and formal hearing will be held on date, time and location.-

You will be afforded an opportunity to present evidence in your behalf and you may be represented by an attorney, if you so desire.

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

BY _____
 Chief Hearing Officer
 Michael J. Oglesby

Proposed Regulations

* * * * *

Title of Regulation: VR 125-01-2. Advertising.

Statutory Authority: §§ 4.1-103 12 and 17, 4.1-111 A, 4.1-113, 4.1-320 and 4.1-329 of the Code of Virginia.

Public Hearing Date: December 20, 1993 - 10 a.m.

Written comments may be submitted through December 17, 1993.

(See Calendar of Events section for additional information)

Basis: §§ 4.1-103 12 and 17, 4.1-111 A, 4.1-113, 4.1-320, and 4.1-329 of the Code of Virginia. Authority of the board to promulgate regulations generally; authority specifically to regulate advertising of alcoholic beverages in the Commonwealth, including certain advertising in the interior of retail establishments; and to do all acts necessary and advisable to carry out the purposes of Title 4.1 of the Code of Virginia.

Purpose: To amend §§ 1 through 10 generally so as to conform to the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and other technical changes as they relate to recodification; to make changes in style or form to §§ 2, 5, 6 and 9; to reflect actual practices in the marketplace involving interior advertising of alcoholic beverages on inflatables; to attain parity between spirits advertising and wine and beer advertising within the interior of retail establishments; to make the records retention period consistent with proposed amendments to VR 125-01-7 § 9; and to allow outdoor advertising to better inform tourists of locations of wineries holding retail off-premises winery licenses and farm wineries.

Substance:

1. Update the sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages."
2. Amend § 2 to permit any inflatable plastic items not in excess of \$5.00 in wholesale value to be displayed inside licensed retail establishments.
3. Amend § 2 to permit spirits back-bar pedestals to be displayed inside licensed retail establishments.
4. Amend § 2 to increase from two years to three years the retention period for records which retail licensees must maintain for permanent point-of-sale advertising materials obtained by them and to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours."
5. Amend § 3 to eliminate the square footage limitations of distant, off-site directional signs of farm

wineries and wineries holding retail off-premises winery licenses, and to permit the advertising of trade names and the terms "farm winery" and "winery" on such signs.

Issues:

1. To comply with the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and changes merely technical in nature.
2. Incorporation of current industry practices.
3. Parity in the display of interior alcoholic beverage advertising.
4. Achievement of consistency and uniformity in all record keeping requirements.
5. Enhancement of economic viability for Virginia wineries which depend largely on tourism.

Impact:

1. All ABC licensees (approximately 13,532 as of 8/1/93) located within and outside the Commonwealth will be affected by recodification, interior advertising amendments and record keeping changes. All retail off-premises winery licensees and farm winery licensees (approximately 40 as of 8/1/93) located throughout the Commonwealth will be affected by the amendment to exterior sign advertising. All mixed beverage licensees (approximately 2,927 as of 8/1/93) located throughout the Commonwealth will be affected by different types of spirits brand advertising.
2. There will not be any additional costs associated with the agency's implementation of these amendments.
3. The cost of compliance is difficult to estimate because a business may or may not choose to increase its alcoholic beverage advertising. All advertising costs will be borne by the alcoholic beverage industry. The cost of compliance for keeping records for an additional year is difficult to estimate because licensees will incur different storage costs. There will not be any additional compliance costs associated with the other amendments to VR 125-01-2.

Summary:

The proposed amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages"; (ii) amend § 2 to permit any inflatable plastic items not in excess of \$5.00 in wholesale value to be displayed inside licensed retail establishments; (iii) amend § 2 to permit spirits back-bar pedestals to be

displayed inside licensed retail establishments; (iv) amend § 2 to increase from two years to three years the retention period for records which retail licensees must maintain for permanent point-of-sale advertising materials obtained by them and to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours"; and (v) amend § 3 to eliminate the square footage limitations of distant, off-site directional signs of farm wineries and wineries holding retail off-premises winery licenses, and to permit the advertising of trade names and the terms "farm winery" and "winery" on such signs.

VR 125-01-2. Advertising.

§ 1. Advertising; generally; cooperative advertising; federal laws; beverages and cider; restrictions.

A. Generally.

All alcoholic beverage and beverage advertising is permitted in this Commonwealth except that which is prohibited or otherwise limited or restricted by regulation of the board and such advertising shall not be blatant or obtrusive. Any editorial or other reading matter in any periodical, publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by or for the benefits of any permittee or licensee does not constitute advertising.

B. Cooperative advertising.

There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer or wholesaler and a retailer of alcoholic beverages, except as may be authorized by regulation of the board pursuant to § 4-79.1-4.1-216 of the Code of Virginia. The term "cooperative advertising" shall mean the payment or credit, directly or indirectly, by any manufacturer, bottler, importer or wholesaler whether licensed in this Commonwealth or not to a retailer for all or any portion of advertising done by the retailer.

C. Beverages and cider Cider .

Advertising of beverages and cider, as defined in §§ 4-99 and 4-27, respectively, § 4.1-213 of the Code of Virginia, shall conform with the requirements for advertising beer.

D. Exceptions.

The board may issue a permit authorizing a variance from any of its advertising regulations for good cause shown.

E. General restrictions.

No advertising shall contain any statement, symbol, depiction or reference that:

1. Would tend to induce minors to drink, or would tend to induce persons to consume to excess;
2. Is lewd, obscene or indecent or is suggestive of any illegal activity;
3. Incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess;
4. Is false or misleading in any material respect, or implies that the product has a curative or therapeutic effect, or is disparaging of a competitor's product;
5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags, seals or other insignia or otherwise;
6. Makes any reference to the intoxicating effect of any alcoholic beverages;
7. Constitutes or contains a contest or sweepstakes where a purchase is required for participation; or
8. Constitutes or contains an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages or beverages, except for refund coupons and combination packaging for wine. Any such combination packaging shall be limited to packaging provided by the manufacturer that is designed to be delivered intact to the consumer.

F. The board shall not regulate advertising of nonalcoholic beer or nonalcoholic wine so long as (i) a reasonable person by common observation would conclude that the advertising clearly does not represent any advertisement for alcoholic beverages or beverages and (ii) the advertising prominently states that the product is nonalcoholic.

§ 2. Advertising; interior; retail licensees.

A. Definition.

As used in this § 2, the term "advertising materials" means any tangible property of any kind which utilizes words or symbols making reference to any brand or manufacturer of alcoholic beverages; except when used in the advertisement of nonalcoholic beer or nonalcoholic wine in accordance with the provisions of VR 125-01-2 § 1 F.

B. The use of advertising materials inside licensed retail establishments shall be subject to the following provisions:

1. Retail licensees may use any nonpermanent advertising material which is neither designed as, nor functions as, permanent point-of-sale advertising material including, but not limited to, nonmechanical advertising material consisting of printed matter appearing on paper, cardboard, canvas or plastic

Proposed Regulations

stock; however, canvas advertising materials shall be restricted to fabric banners containing only two-dimensional display surfaces and plastic advertising materials shall be restricted to (i) thin sheets or strips containing only two-dimensional display surfaces or (ii) any inflatable plastic items not in excess of \$5.00 in wholesale value. Such advertising materials may be obtained by such retailers from any source, including manufacturers, bottlers and wholesalers of alcoholic beverages who may sell, lend, buy for or give to such retailers such advertising materials; provided, however, that nonpermanent advertising material referring to any brand or manufacturer of distilled spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers, or their employees, unless they hold a distilled spirits solicitor's permit;

2. Retail on-premises and on-and-off-premises licensees may use any mechanical or illuminated devices which are designed or manufactured to serve as permanent point-of-sale advertising. Such advertising devices may be obtained and displayed by retailers provided that any such devices do not make reference to brands of alcoholic beverages offered for sale in such retail establishment or to brands or the name of any manufacturer whose alcoholic beverage products are offered for sale in such retail establishment and, provided further, that such advertising materials are not supplied, installed, maintained or otherwise serviced by any manufacturers, bottlers or wholesalers of alcoholic beverages, and that no such advertising relating to distilled spirits shall be authorized in an establishment not licensed to sell mixed beverages;

3. Notwithstanding subdivision B 2 above, retail licensees may display any permanent point-of-sale advertising pertaining to nonalcoholic beer or nonalcoholic wine. Any such brand of nonalcoholic beer or nonalcoholic wine may be offered for sale in the retail establishment. Such permanent point-of-sale advertising may not be supplied, installed, maintained or otherwise serviced by any manufacturer, bottler or wholesaler of alcoholic beverages;

4. Advertising materials described in the following categories may be displayed inside a retail establishment by a retail licensee provided that any conditions or limitations stated in regard to a given category of advertising materials are observed:

a. Advertising materials, including those promoting responsible drinking or moderation in drinking, consisting of printed matter appearing on paper, cardboard, canvas or plastic stock supplied by any manufacturer, bottler or wholesaler of alcoholic beverages in accordance with the provisions of this section provided, however, that nonpermanent advertising materials referring to any brand or manufacturer of distilled spirits may only be provided to mixed beverage licensees and may not

be provided by beer and wine wholesalers or their employees unless they hold a distilled spirits solicitors permit;

b. Works of art so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages;

c. Materials displayed in connection with the sale of over-the-counter novelty and specialty items in accordance with § 6 of this regulation;

d. Materials used in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semiprofessional or amateur athletic and sporting events, and events of a charitable or cultural nature by distilleries, wineries and breweries, subject to the provisions of § 10 B of this regulation;

e. Service items such as placemats, coasters and glasses so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages; however, manufacturers, bottlers or wholesalers may supply to retailers napkins, placemats, and coasters and back-bar pedestals which contain (i) a reference to the name of a brand of nonalcoholic beer or nonalcoholic wine as permitted under VR 125-01-2 § 1 F, or (ii) a message relating solely to and promoting moderation and responsible drinking, which message may contain the name, logo and address of the sponsoring manufacturer, bottler or wholesaler, provided such recognition is subordinate to the message, occupies no more than 10% of the space, and contains no reference to or pictures of the sponsor's brand or brands;

f. Draft beer and wine knobs, spirits back-bar pedestals, bottle or can openers, beer, wine and distilled spirits clip-ons and table tents, subject to the provisions of § 6 of VR 125-01-3;

g. Beer and wine "neckers," recipe booklets, brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area; and point-of-sale entry blanks relating to contests and sweepstakes may be provided by beer and wine wholesalers to retail licensees for use on retail premises, if such items are offered to all retail licensees equally, and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia the Commonwealth may not put entry blanks on the package; and

h. Refund coupons, if they are supplied, displayed and used in accordance with § 9 of VR 125-01-2 ; .

Proposed Regulations

C. Manufacturers, wholesalers, etc.

No manufacturer, bottler, wholesaler or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for, or give to any retailer any advertising materials, decorations or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising.

D. Any advertising materials provided for herein, which may have been obtained by any retail licensee from any manufacturer, bottler or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such manufacturer, bottler or wholesaler using any normal and customary installation materials, provided no such materials are installed or displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises. With the consent of the retail licensee, which consent may be a continuing consent, wholesalers may mark or affix retail prices on these materials.

E. Every retail licensee who, pursuant to subdivisions B 2 or B 3 above, obtains any permanent point-of-sale advertising shall keep a complete, accurate and separate record of all such material obtained. Such records shall show: (i) the name and address of the person from whom obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged therefor. All such records, invoices and accounts shall be kept by each such licensee at the place designated in the license for a period of ~~two~~ *three* years and shall be available for inspection and copying by any member of the board or its *special* agents ~~at any time during business during reasonable hours.~~

§ 3. Advertising; exterior; signs; vehicles; uniforms.

Outdoor alcoholic beverage advertising shall be limited to signs and is otherwise discretionary, except as follows:

1. Manufacturers and wholesalers, including wineries and farm wineries:

a. No more than one sign upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises;

b. No more than two signs, which must be directional in nature, not farther than 1/2 mile from the licensed establishment limited in dimension to 64 square feet with advertising limited to brand names;

c. If the establishment is a winery also holding a *winery retail* off-premises *winery* license or is a farm winery, additional directional signs ~~limited in~~

~~dimension to 64 square feet with advertising limited to trade names, brand names, the terms "farm winery" or "winery," and tour information, may be erected in accordance with state and local rules, regulations and ordinances; and~~

d. Only on vehicles and uniforms of persons employed exclusively in the business of a manufacturer or wholesaler, which shall include any antique vehicles bearing original or restored alcoholic beverage advertising used for promotional purposes. Additionally, any person whether licensed in this Commonwealth or not, may use and display antique vehicles bearing original or restored alcoholic beverage advertising.

2. Retailers, including mixed beverage licensees, other than carriers and clubs:

a. No more than two signs at the establishment and, in the case of establishments at intersections, three signs, the advertising on which, including symbols approved by the United States Department of Transportation relating to alcoholic beverages, shall be limited to 12 inches in height or width and not animated and, in the case of signs remote from the premises, subordinate to the main theme and substantially in conformance with the size and content of advertisements of other services offered at the establishment; and

b. Limited only to words and terms appearing on the face of the license describing the privileges of the license and, where applicable: "Mixed Drinks," "Mixed Beverages," "Cocktails," "Exotic Drinks," "Polynesian Drinks," "Cocktail Lounge," "Liquor," "Spirits," and not including any reference to or depiction of "Bar Room," "Saloon," "Speakeasy," "Happy Hour," or references or depictions of similar import, nor to prices of alcoholic beverages, including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages. Notwithstanding the above, the terms "Bar," "Bar Room," "Saloon," and "Speakeasy" may be used in combination with other words that connote a restaurant as part of the retail licensee's trade name; and

c. No advertising of alcoholic beverages may be displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises, except on table menus or newspaper tear sheets.

3. Manufacturers, wholesalers and retailers may engage in billboard advertising within stadia, coliseums or racetracks that are used primarily for professional or semiprofessional athletic or sporting events.

Proposed Regulations

§ 4. Advertising; newspaper, magazines, radio, television, trade publications, etc.

A. Generally.

Beer, wine and mixed beverage advertising in the print or electronic media is permitted with the following exceptions:

1. All references to mixed beverages are prohibited except the following: "Mixed Drinks," "Mixed Beverages," "Exotic Drinks," "Polynesian Drinks," "Cocktails," "Cocktail Lounges," "Liquor" and "Spirits";
2. The following terms or depictions thereof are prohibited unless they are used in combination with other words that connote a restaurant and they are part of the licensee's trade name: "Bar," "Bar Room," "Saloon," "Speakeasy," or references or depictions of similar import; and
3. Any references to "Happy Hour" or similar terms are prohibited.

B. Further requirements and conditions:

1. All alcoholic beverage advertising shall include the name and address (street address optional) of the responsible advertiser;
2. Advertising placed by a manufacturer, bottler or wholesaler in trade publications of associations of retail licensees or college publications shall not constitute cooperative advertising;
3. Advertisements of beer, wine and mixed beverages are not allowed in college student publications unless in reference to a dining establishment, except as provided below. A "college student publication" is defined as any college or university publication that is prepared, edited or published primarily by students at such institution, is sanctioned as a curricular or extra-curricular activity by such institution and which is distributed or intended to be distributed primarily to persons under 21 years of age.

Advertising of beer, wine and mixed beverages by a dining establishment in college student publications shall not contain any reference to particular brands or prices and shall be limited only to the use of the following words: "A.B.C. on-premises," "beer," "wine," "mixed beverages," "cocktails," or any combination of these words; and

4. Advertisements of beer, wine and mixed beverages are prohibited in publications not of general circulation which are distributed or intended to be distributed primarily to persons under 21 years of age, except in reference to a dining establishment as provided in subdivision 3 above; notwithstanding the above mentioned provisions, all advertisements of

beer, wine and mixed beverages are prohibited in publications distributed or intended to be distributed primarily to a high school or younger age level.

5. Notwithstanding the provisions of this or any other regulation of the board pertaining to advertising, a manufacturer, bottler or wholesaler of alcoholic beverages may place an advertisement in a college student publication which is distributed or intended to be distributed primarily to persons over 18 and under 21 years of age which has a message relating solely to and promoting public health, safety and welfare, including, but not limited to, moderation and responsible drinking messages, anti-drug use messages and driving under the influence warnings. Such advertisement may contain the name, logo and address of the sponsoring industry member, provided such recognition is at the bottom of and subordinate to the message, occupies no more than 10% of the advertising space, and contains no reference to or pictures of the sponsor's brand or brands, mixed drinks, or exterior signs. Any public service advertisement involving alcoholic beverages or beverages shall contain a statement specifying the legal drinking age in the Commonwealth.

§ 5. Advertising; newspapers and magazines; programs; distilled spirits.

A. Except as provided in subsection B, alcoholic beverage advertising of products greater than 14% alcohol by manufacturers, bottlers, importers or wholesalers via the media shall be limited to newspapers and magazines of general circulation, or similar publications of general circulation, and to printed programs relating to professional, semi-professional and amateur athletic and sporting events, conservation and environmental programs and for events of a charitable or cultural nature, subject to the following conditions:

1. Required statements.

- a. Name. Name and address (street address optional) of the responsible advertiser.
- b. Contents. Contents of the product advertised in accordance with all labeling requirements. If only the class of distilled spirits or wine, such as "whiskey" or "chardonnay" is referred to, statements as to contents may be omitted.
- c. Type size. Any written, printed or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.

2. Prohibited statement. Any reference to a distilled spirits price that is not the prevailing price at government stores, excepting references approved in advance by the board relating to temporarily discounted prices.

3. Further limitation. ~~Distilled spirits~~ *Spirits* may not be advertised in college student publications as defined in § 4 B 3 of this regulation nor in newspapers, programs or other written or pictorial matter primarily relating to intercollegiate athletic events.

B. Electronic advertising of alcoholic beverages containing more than 14% alcohol but less than 22% alcohol shall be permitted as long as it emphasizes that such alcoholic beverages are traditionally served with meals or immediately before or following a meal.

§ 6. Advertising; novelties and specialties.

Distribution of novelty and specialty items, including wearing apparel, bearing alcoholic beverage advertising, shall be subject to the following limitations and conditions:

1. Items not in excess of \$5.00 in wholesale value may be given away;
2. Manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give items not in excess of \$5.00 in wholesale value, limited to one item per retailer, and one item per employee, per visit, which may not be displayed on the licensed premises. Neither manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give such items to patrons on the premises of retail licensees.
3. Items in excess of \$5.00 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events subject to the limitations of § 10 of VR 125-01-2, and for events of a charitable or cultural nature;
4. Items may be sold by mail upon request or over-the-counter at retail establishments customarily engaged in the sale of novelties and specialties, provided they are sold at the reasonable open market price in the localities where sold;
5. Wearing apparel shall be in adult sizes;
6. Point-of-sale order blanks, relating to novelty and specialty items, may be provided by beer and wine wholesalers to retail licensees for use on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in ~~Virginia~~ *the Commonwealth* may not put order blanks on the package. Wholesalers may not be involved in the redemption process.

§ 7. Advertising; fairs and trade shows; alcoholic beverage

displays.

Alcoholic beverage advertising at fairs and trade shows shall be limited to booths assigned to manufacturers, bottlers and wholesalers and to the following:

1. Display of alcoholic beverages ~~and beverages~~ in closed containers with informational signs provided such merchandise is not sold or given away except as permitted in VR 125-01-7, § 10;
2. Distribution of informational brochures, pamphlets, and the like, relating to alcoholic beverages ~~and beverages~~; and
3. Distribution of novelty and specialty items bearing alcoholic beverage ~~and beverage~~ advertising not in excess of \$5.00 in wholesale value.

§ 8. Advertising; film presentations.

Advertising of alcoholic beverages by means of film presentations is restricted to the following:

1. Presentations made only to bona fide private groups, associations or organizations upon request; and
2. Presentations essentially educational in nature.

§ 9. Advertising; coupons.

A. Definitions.

"Normal retail price" shall mean the average retail price of the brand and size of the product in a given market, and not a reduced or discounted price.

B. Coupons may be advertised in accordance with the following conditions and restrictions:

1. Manufacturers of spirits, wine and beer may use only refund, not discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored at a retail outlet but shall be mailed directly to the manufacturer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Coupons are permitted in the print media, by direct mail to consumers or as part of, or attached to, the package. Beer refund coupons may be part of, or attached to, the package only if the brewery put them on at the point of manufacture; however, beer and wine wholesalers may provide coupon pads to retailers for use by retailers on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale beer licensees in ~~Virginia~~ *the Commonwealth* may not put them on the package. Wholesale wine licensees may attach refund coupons to the package and wholesale wine licensees may provide coupon pads to retailers for use by retailers

Proposed Regulations

on their premises, if done for all retail licensees equally and after obtaining the consent which may be a continuing consent for each retailer or his representative.

2. Manufacturers offering coupons on distilled spirits and wine sold in state government stores shall notify the board at least 45 days in advance of the issuance of the coupons of its amount, its expiration date and the area of the Commonwealth in which it will be primarily used, if not used statewide.

3. Wholesale licensees of the board are not permitted to offer coupons.

4. Retail licensees of the board may offer coupons, including their own discount or refund coupons, on wine and beer sold for off-premises consumption only. Retail licensees may offer their own coupons in the print media, at the point-of-sale or by direct mail to consumers.

5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons and the name of the retail establishment may not appear on any refund coupons offered by manufacturers. No manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers which are customized or designed for discount or refund by the retailer.

6. Retail licensees or employees thereof may not receive refunds on coupons obtained from the packages before sale at retail.

7. No coupons may be honored for any individual below the legal age for purchase.

§ 10. Advertising; sponsorship of public events; restrictions and conditions.

A. Generally.

Alcoholic beverage advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events and events of a charitable or cultural nature by distilleries, wineries, and breweries.

B. Restrictions and conditions.

1. Any sponsorship on a college, high school or younger age level is prohibited;

2. Cooperative advertising, as defined in § 1 of these regulations, is prohibited;

3. Awards or contributions of alcoholic beverages are prohibited;

4. Advertising of alcoholic beverages shall conform in size and content to the other advertising concerning the event and advertising regarding charitable events shall place primary emphasis on the charitable fund raising nature of the event;

5. A charitable event is one held for the specific purpose of raising funds for a charitable organization which is exempt from federal and state taxes;

6. Advertising in connection with the sponsorship of an event may be only in the media, including programs, tickets and schedules for the event, on the inside of licensed or unlicensed retail establishments and at the site of the event;

7. Advertising materials as defined in VR 125-01-3 § 6 F G , table tents as defined in VR 125-01-3 § 6 G H and canisters are permitted;

8. Prior written notice shall be submitted to the board describing the nature of the sponsorship and giving the date, time and place of it; and

9. Manufacturers may sponsor public events and wholesalers may only cosponsor charitable events.

VA.R. Doc. No. R94-34; Filed September 24, 1993, 11:41 a.m.

* * * * *

Title of Regulation: VR 125-01-3. Tied House.

Statutory Authority: §§ 4.1-103 12 and 17, 4.1-111 A and B 3 of the Code of Virginia.

Public Hearing Date: December 20, 1993 - 10 a.m.

Written comments may be submitted through December 17, 1993.

(See Calendar of Events section for additional information)

Basis: §§ 4.1-103 12 and 17, 4.1-111 A and B 3 of the Code of Virginia. Authority of the board to promulgate regulations generally; the statutory mandate that the board promulgate regulations which maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, wholesalers, etc., in accordance with § 4.1-216 of the Code of Virginia; and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia.

Purpose: To amend §§ 1 through 7 generally so as to conform to the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and other technical changes as they relate to recodification; to make changes in style or form to §§ 1, 2, 3, 4, 5 and 7; to achieve parity between spirits manufacturers and wine and beer manufacturers, bottlers and wholesalers; to restrict the types of

Proposed Regulations

point-of-sale advertising any manufacturer, bottler or wholesaler may provide to retail licensees; and to incorporate current policy into the "cash law" regulations.

Substance:

1. Update the sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages."
2. Amend § 3 to require that payments to the board be made in "cash" for application fees, excise taxes on wine coolers, solicitors' fees, temporary permit fees and the mark-up or profit on cider.
3. Amend § 6 to allow distillers to furnish to retail licensees, without regard to the value thereof, back-bar pedestals bearing spirits advertising to be used on the retail premises.
4. Amend § 6 to prohibit manufacturers, bottlers and wholesalers from providing customized advertising materials for particular retail licensees or which are not otherwise generally available to all retailers.

Issues:

1. To comply with the 1993 recodification of Title 4 and new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and changes merely technical in nature.
2. To reflect current practice and board policy.
3. To achieve parity between spirits manufacturers and wine and beer manufacturers, bottlers and wholesalers.

Impact:

1. All ABC licensees (approximately 13,532 as of 8/1/93) located within and outside the Commonwealth will be affected by recodification. All spirits manufacturers, brokers, and mixed beverage retail licensees (approximately 2,930 as of 8/1/93) located within and outside the Commonwealth will be affected by different types of spirits brand advertising.
2. There will not be any additional costs associated with the agency's implementation of these amendments.
3. The cost of compliance for different types of spirits brand advertising is difficult to estimate because a business may or may not choose to increase its alcoholic beverage advertising. All advertising costs will be borne by the spirits industry. There will not be any additional compliance costs associated with the other amendments to VR 125-01-3.

Summary:

The proposed amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages"; (ii) amend § 3 to require that payments to the board be made in "cash" for application fees, excise taxes on wine coolers, solicitors' fees, temporary permit fees and the mark-up or profit on cider; (iii) amend § 6 to allow distillers to furnish to retail licensees, without regard to the value thereof, back-bar pedestals bearing spirits advertising to be used on the retail premises; and (iv) amend § 6 to prohibit manufacturers, bottlers and wholesalers from providing customized advertising materials for particular retail licensees or which are not otherwise generally available to all retailers.

VR 125-01-3. Tied House.

§ 1. Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

A. Permitted acts.

For the purpose of maintaining the freshness of the stock and the integrity of the products sold by him, a wholesaler may perform, except on Sundays, the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack and rearrange wine or beer in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area);
2. Restock beer wine and wine beer ;
3. Rotate, repack, rearrange and add to his own stocks of wine or beer in a storeroom space assigned to him by the retailer;
4. Transfer beer wine and wine beer between storerooms, between displays, and between storerooms and displays; and
5. Create or build original displays using wine or beer products only.

B. Prohibited acts.

A wholesaler may not:

1. Alter or disturb in any way the merchandise sold by another wholesaler, whether in a display, sales area or storeroom except in the following cases:
 - a. When the products of one wholesaler have been erroneously placed in the area previously assigned by the retailer to another wholesaler; or
 - b. When a floor display area previously assigned by

Proposed Regulations

a retailer to one wholesaler has been reassigned by the retailer to another wholesaler;

2. Mark or affix retail prices to products; or

3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:

a. Products defective at the time of delivery may be replaced;

b. Products erroneously delivered may be replaced or money refunded;

c. Products that a manufacturer discontinues nationally may be returned and money refunded;

d. Resalable draft beer or beverages may be returned and money refunded;

e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board;

f. Products which have been condemned and are not permitted to be sold in this state may be replaced or money refunded upon permit issued by the board; or

g. Beer Wine or wine beer may be exchanged on an identical quantity, brand and package basis for quality control purposes. Any such exchange shall be documented by the word "exchange" on the proper invoice.

§ 2. Restrictions upon employment; exceptions.

No retail licensee of the board shall employ in any capacity in his licensed business any person engaged or employed in the manufacturing, bottling or wholesaling of alcoholic beverages or beverages; nor shall any licensed manufacturer, bottler or wholesaler licensed by the board employ in any capacity in his licensed business any person engaged or employed in the retailing of alcoholic beverages or beverages.

This section shall not apply to banquet licensees or to off-premises winery licensees.

§ 3. Certain transactions to be for cash; "cash" defined; checks and money orders; electronic fund transfers; records and reports by sellers; payments to the board.

A. Generally.

Sales of wine; or beer or beverages between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, except

where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.

B. "Cash" defined.

"Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in Virginia the Commonwealth (iii) a valid check drawn upon a bank account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase, or (iv) an electronic fund transfer, initiated by a wholesaler pursuant to subsection D of this section, from a bank account in the name, or trade name, of the retail licensee making a purchase from a wholesaler or the board.

C. Checks, money orders and electronic fund transfers.

If a check, money order or electronic fund transfer is used, the following provisions apply:

1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders or electronic fund transfers shall be no larger than the purchase price of the alcoholic beverages or beverages; and

2. If nonalcoholic merchandise is also sold to the retailer, the check, money order or electronic fund transfer may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. A separate invoice shall be used for the nonalcoholic merchandise and a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of the wholesaler and the retailer.

D. Electronic fund transfers.

If an electronic fund transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the board, the following provisions shall apply:

1. Prior to an electronic fund transfer, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an electronic fund transfer in payment for the delivery of wine; or beer or beverages to that retail licensee. The electronic fund transfer shall be initiated by the wholesaler no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic fund transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a

Proposed Regulations

business day of the respective bank.

2. The wholesaler must generate an invoice covering the sale of wine ; or beer or beverages and shall specify that payment is to be made by electronic fund transfer. Each invoice must be signed by the purchaser at the time of delivery.

3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic fund transfer.

E. Records and reports by sellers.

Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine ; or beer or beverages , as well as any stop payment order, insufficient fund report or any other incomplete electronic fund transfer reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account. Further, wholesalers shall report to the board any invalid checks or incomplete electronic fund transfer reports received in payment of wine ; or beer or beverages when either (i) any such invalid check or incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic fund transfer report from the bank of any single retail licensee, or any combination of two, within a period of 180 days. Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form.

F. Payments to the board.

Payments to the board for the following items shall be for cash, as defined in subsection B of this section :

1. State license taxes and application fees;
2. Purchases of alcoholic beverages from the board by mixed beverage licensees;
3. Wine taxes collected pursuant to § 4-22.1 of the Code of Virginia and excise taxes on beer and wine coolers ;
4. Beer and beverage excise taxes pursuant to Chapter 4 (§ 4-127 et seq.) of Title 4 of the Code of Virginia Solicitors permit fees and temporary permit fees ;
5. Registration and certification fees , and the markup or profit on cider, collected pursuant to these regulations;
6. Monetary penalties Civil penalties or charges and costs imposed on licensees and permittees by the

board; and

7. Forms provided to licensees and permittees at cost by the board.

§ 4. Deposits on containers required; records; redemption of deposits; exceptions.

A. Minimum deposit.

Wholesalers shall collect in cash, at or prior to the time of delivery of any beer or beverages sold to a retail licensee, the following minimum deposit charges on the containers:

Bottles having a capacity of not more than 12 oz.	\$0.02
Bottles having a capacity of more than 12 oz. but not more than 32 oz.	\$0.04
Cardboard, fibre or composition cases other than for 1 1/8-or 2 1/4-gallon kegs	\$0.02
Cardboard, fibre or composition cases for 1 1/8-or 2 1/4-gallon kegs	\$0.50
Kegs, 1 1/8-gallon	\$1.75
Kegs, 2 1/4-gallon	\$3.50
Kegs, 1/4-barrel	\$4.00
Kegs, 1/2-barrel	\$6.00
Keg covers, 1/4-barrel	\$4.00
Keg covers, 1/2-barrel	\$6.00
Tapping equipment for use by consumers	\$10.00
Cooling tubs for use by consumers	\$5.00
Cold plates for use by consumers	\$15.00

B. Records.

The sales ticket or invoice shall reflect the deposit charge and shall be preserved as a part of the licensee's records.

C. Redemption of deposits.

Deposits shall be refunded upon the return of the containers in good condition.

D. Exceptions.

Deposits shall not be required on containers sold as nonreturnable items.

§ 5. Solicitation of licensees by wine ; and beer and

Proposed Regulations

beverage solicitor salesmen or representatives.

A. Generally.

A permit is not required to solicit or promote wine ; or beer or beverages to wholesale or retail licensees of the board , including mixed beverage licensees, by a wine ; or beer or beverage solicitor salesman who represents any winery, brewery, wholesaler or importer licensed in this Commonwealth engaged in the sale of wine ; and beer and beverages . Further, a permit is not required to sell (which shall include the solicitation or receipt of orders) wine ; or beer or beverages to wholesale or retail licensees of the board , including mixed beverage licensees, by a wine ; or beer or beverage solicitor salesman who represents any winery, brewery or wholesaler licensed in this Commonwealth engaged in the sale of wine ; and beer and beverages .

B. Permit required.

A permit is required to solicit or promote wine ; or beer or beverages to wholesale or retail licensees of the board , including mixed beverage licensees, by a wine ; or beer or beverage solicitor salesman or representative of any out-of-state wholesaler engaged in the sale of wine ; or beer or beverages, but not holding a license therefor in this Commonwealth, or of any manufacturers, wholesalers or any other person outside this Commonwealth holding a wine or beer importer's license issued by the board . A permit under this section shall not authorize the sale of wine and wine coolers by the permittee, the direct solicitation or receipt of orders for wine and wine coolers , or the negotiation of any contract or contract terms for the sale of wine and wine coolers unless such sale, receipt or negotiations are conducted in the presence of a licensed Virginia wholesaler or importer or such Virginia wholesaler's or importer's solicitor salesman or representative. In order to obtain a permit, a person shall:

1. Register with the board by filing an application on such forms as prescribed by the board;
2. Pay a fee of \$125, which is subject to proration on a quarterly basis, pursuant to the provisions of § 4-26(b) 4.1-230 E of the Code of Virginia; and
3. Be 18 years old or older to solicit or promote the sale of wine ; or beer or beverages , and may not be employed at the same time by a nonresident person an out-of-state wholesaler engaged in the sale of wine ; or beer or beverages at wholesale and by a licensee of the board to solicit the sale of or sell wine ; or beer or beverages , and shall not be in violation of the provisions of § 3 2 .

C. Each permit shall expire yearly on June 30 unless sooner suspended or revoked by the board.

D. Solicitation and promotion under this regulation may include educational programs regarding wine ; or beer or

beverages for mixed beverage licensees, but shall not include the promotion of, or educational programs related to, distilled spirits or the use thereof in mixed drinks unless a distilled spirits solicitor's permit has been obtained in addition to a solicitor's permit.

E. For the purposes of this regulation, the soliciting or promoting of wine ; or beer or beverages shall be distinguished from the sale of such products, the direct solicitation or receipt of orders for alcoholic beverages or the negotiation of any contract or contract terms for the sale of alcoholic beverages. This regulation shall not be deemed to regulate the representative of a manufacturer, importer or wholesaler from merely calling on retail licensees to check on market conditions, the freshness of products on the shelf or in stock, the percentage or nature of display space, or the collection of similar information where solicitation or product promotion is not involved.

§ 6. Inducements to retailers; tapping equipment; bottle or can openers; spirits back-bar pedestals; banquet licensees; paper, cardboard or plastic advertising materials; clip-ons and table tents.

A. Beer tapping equipment.

Any manufacturer, bottler or wholesaler may sell, rent, lend, buy for or give to any retailer, without regard to the value thereof, the following:

1. Draft beer knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer; and
2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet, excluding the following:
 - a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;
 - b. Gas pressure gauges (may be sold at cost);
 - c. Draft arms or standards;
 - d. Draft boxes; and
 - e. Refrigeration equipment or components thereof.

Further, a manufacturer, bottler or wholesaler may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

B. Wine tapping equipment.

Any manufacturer, bottler or wholesaler may sell to any retailer and install in the retailer's establishment tapping accessories such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves, if the tapping accessories are sold at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

Wine tapping equipment shall not include the following:

1. Draft wine knobs, which may be given to a retailer;
2. Carbonic acid gas, nitrogen gas, or compressed air in containers, except that such gases may be sold in accordance with the reasonable open market prices in the locality where sold and if the price is collected within 30 days of the date of the sales; or
3. Mechanical refrigeration equipment.

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee, provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not less than the initial purchase price paid by such wholesaler.

D. Bottle or can openers.

Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed \$5.00. Openers in excess of \$5.00 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

E. Spirits back-bar pedestals.

Any manufacturer of spirits may sell, lend, buy for or give to any retail licensee, without regard to the value thereof, back-bar pedestals to be used on the retail premises and upon which advertising matter regarding spirits may appear.

E. F. Banquet licensees.

Manufacturers or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees paper or plastic cups upon which advertising matter regarding wine or beer may appear.

F. G. Paper, cardboard, canvas and plastic advertising.

Manufacturers, bottlers or wholesalers of alcoholic beverages may not provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees except in accordance with VR 125-01-2 § 2. *Manufacturers, bottlers and wholesalers may not provide advertising materials to any retail licensee that have been customized for that retail licensee or which are not otherwise generally available to all retail licensees.*

G. H. Clip-ons and table tents.

Any manufacturer, bottler or wholesaler of wine, beer or distilled spirits may sell, lend, buy for or give to any retail licensee clip-ons and table tents containing the listing of not more than four wines or four beers. There is no limitation on the number of distilled spirits brands which may be listed on clip-ons and table tents.

H. I. Cleaning and servicing equipment.

Any manufacturer, bottler or wholesaler of alcoholic beverages may clean and service, either free or for compensation, coils and other like equipment used in dispensing wine and beer, and may sell solutions or compounds for cleaning wine and beer glasses, provided the reasonable open market price is charged.

I. J. Sale of ice.

Any manufacturer, bottler or wholesaler of alcoholic beverages licensed in this Commonwealth may sell ice to retail licensees provided the reasonable open market price is charged.

J. K. Sanctions and penalties.

Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4-79.1 A 4.1-216 A of the Code of Virginia, wholesaler or retailer who violates, *attempts to violate*, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4-79.1 D 4.1-328 of the Code of Virginia.

§ 7. Routine business entertainment; definition; permitted activities; conditions.

A. Generally.

Nothing in this regulation shall prohibit a wholesaler or manufacturer of alcoholic beverages licensed in ~~Virginia~~ *the Commonwealth* from providing a retail licensee of ~~the board~~ "routine business entertainment" which is defined as those activities enumerated in subsection B.

B. Permitted activities:

1. Meals and beverages;
2. Concerts, theatre and arts entertainment;

Proposed Regulations

3. Sports participation and entertainment;
4. Entertainment at charitable events; and
5. Private parties.

C. Conditions.

The following conditions apply:

1. Such routine business entertainment shall be provided without a corresponding obligation on the part of the retail licensee to purchase alcoholic beverages or to provide any other benefit to such wholesaler or manufacturer or to exclude from sale the products of any other wholesaler or manufacturer;
2. Wholesaler or manufacturer personnel shall accompany the personnel of the retail licensee during such business entertainment;
3. Except as is inherent in the definition of routine business entertainment as contained herein, nothing in this regulation shall be construed to authorize the providing of property or any other thing of value to retail licensees;
4. Routine business entertainment that requires overnight stay is prohibited;
5. No more than \$200 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, or any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership or stockholder, and the like, shall not be included within the foregoing restrictions;
6. No person enumerated in subdivision C 5 may be entertained more than six times by a wholesaler and six times by a manufacturer per calendar year;
7. Wholesale licensees and manufacturers shall keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees. These records shall indicate the date and amount of each expenditure, the type of entertainment activity and retail licensee entertained; and
8. This regulation shall not apply to personal friends of wholesalers as provided for in VR 125-01-7 § 10.

VA.R. Doc. No. R94-35; Filed September 24, 1993, 11:41 a.m.

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Title of Regulation: VR 125-01-4. Requirements for Product Approval.

Statutory Authority: §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia.

Public Hearing Date: December 20, 1993 - 10 a.m.

Written comments may be submitted through December 17, 1993.

(See Calendar of Events section for additional information)

Basis: §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia. Authority of the board to promulgate regulations generally; and to do all acts necessary and advisable to carry out the purposes of Title 4.1 of the Code of Virginia.

Purpose: To amend §§ 1 through 5 generally so as to conform to the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and other technical changes as they relate to recodification; to make changes in style or form to §§ 1, 2 and 5; and to give the board discretionary authority to withhold approval of wine labels when disqualifying factors are present.

Substance:

1. Update the sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages."
2. Amend § 2 to change from mandatory to discretionary the board's authority to withhold approval of any wine label.

Issues:

1. To comply with the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.) including changes merely technical in nature.
2. Consistency in the standards used by the board for approval or disapproval of wine and beer labels.

Impact:

1. All ABC licensees (approximately 13,532 as of 8/1/93) located within and outside the Commonwealth will be affected by recodification. All ABC licensed wine manufacturers, bottlers, importers and wholesalers (approximately 255 as of 8/1/93) located within and outside the Commonwealth will be affected by the board's discretionary authority to withhold approval of wine labels when disqualifying factors are present.
2. The cost of agency implementation is difficult to estimate because it is not known how many wine

labels will be approved that formerly would have had to be disapproved. It is believed that the cost would be nominal.

3. There will not be any additional costs associated with the cost of compliance by wine manufacturers, bottlers, importers and wholesalers.

Summary:

The proposed amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages"; and (ii) amend § 2 to change from mandatory to discretionary the board's authority to withhold approval of any wine label, to provide consistency in the standards used by the board for approval or disapproval of wine and beer labels.

VR 125-01-4. Requirements for Product Approval.

§ 1. ~~Distilled spirits~~ *Spirits*; labels, definitions and standards of identity.

~~Distilled spirits~~ *Spirits* sold in this the Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. In addition, the prior approval of the board must be obtained as to the spirits, containers and labels. Applicants shall furnish the board a certified copy of the approval of the label by such federal agency.

Subsequent sales under an approved label shall conform to the analysis of the spirits originally approved by the board, and be packaged in approved types and sizes of containers.

§ 2. Wines, qualifying procedures; disqualifying factors; samples; exceptions.

A. Qualifying procedures.

All wines sold in the Commonwealth shall be first approved by the board as to content, container and label.

1. A certification acceptable to the board or on a form prescribed by the board describing the merchandise may accompany each new brand and type of wine offered for sale in the Commonwealth. A certification fee and a registration fee in such amounts as may be established by the board shall be included with each new certification.

2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; provided, however, that wine already offered for sale by another state with which this Commonwealth has an analysis and certification exchange agreement and wine sold through

government stores shall be subject only to a registration fee in such amount as may be established by the board.

3. All wine sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

4. Subsequent sales under an approved label shall conform to the certification and analysis of the wine originally approved by the board.

5. The board may approve a wine without benefit of a certification or analysis for good cause shown. Good cause includes, but is not limited to, wine which is rare.

B. Disqualifying factors as to contents.

While not limited thereto, the board shall withhold approval of any wine:

1. Which is an imitation or substandard wine as defined under regulations of the appropriate federal agency;
2. If the alcoholic content exceeds 21% by volume;
3. Which is a wine cocktail containing any ingredient other than wine.

C. Disqualifying factors as to labels.

While not limited thereto, the board shall may withhold approval of any label:

1. Which ~~contains the name of a cocktail generally understood to contain~~ *implies or indicates that the product contains* spirits;
2. Where the name of a state is used as a designation of the type of wine, but the contents do not conform to the wine standards of that state;
3. Which contains the word "cocktail" without being used in immediate conjunction with the word "wine" in letters of the same dimensions and characteristics, except labels for sherry wine;
4. Which contain the word "fortified" or implies that the contents contain spirits, except that the composition and alcoholic content may be shown if required by regulations of an appropriate federal agency;
5. Which contains any subject matter or illustration of a lewd, obscene or indecent nature;
6. Which contains subject matter designed to induce

Proposed Regulations

minors to consume alcoholic beverages drink, or is suggestive of the intoxicating effect of wine;

7. Which contains any reference to a game of chance;
8. Which contains any design or statement which is likely to mislead the consumer.

D. Samples.

A person holding a license as a winery, farm winery or a ~~wholesale wine distributor~~ *wholesaler* shall upon request furnish the board without compensation a reasonable quantity of such brand sold by him for chemical analysis; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification.

E. Exceptions.

Any wine whose content, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such wine was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container.

§ 3. Wine containers; sizes and types; on- and off-premises limitations; cooler-dispensers; novel containers; carafes and decanters.

A. Sizes generally.

Wine may be sold at retail only in or from the original containers of the sizes of 1.7 ounces (50 ml. if in a metric sized package) or above which have been approved by the appropriate federal agency.

B. On-premises consumption.

Wine sold for on-premises consumption shall not be removed from the licensed premises except in the original ~~package~~ *container* with closure.

C. Off-premises consumption.

Wine shall not be sold for off-premises consumption in any container upon which the original closure has been broken.

D. Cooler-dispensers.

The sale of wine from cooler-dispensers is prohibited unless the device is designed so that the original container becomes a part of the equipment, except that frozen drink dispensers or containers used in automatic dispensing may be used if approved by the board.

E. Novel or unusual containers.

Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual the board may consider, but is not limited to, the following factors: (i) nature and composition of the container; (ii) length of time it has been employed for the purpose; (iii) the extent to which it is designed or suitable for those uses; (iv) the extent to which the container is a humorous representation; and (v) whether the container is dutiable for any other purpose under custom laws and regulations.

F. Carafes or decanters.

Wine may be served for on-premises consumption in carafes or decanters not exceeding 52 fluid ounces (1.5 liters) in capacity.

§ 4. Beer and beverage containers; sizes; off- and on-premises limitations; novel containers; opening devices.

A. Generally.

Beer and beverages may be sold at retail only in or from the original containers of the sizes which have been approved by the appropriate federal agency.

B. Off- and on-premises limitations.

No beer or beverages shall be sold by licensees for off-premises consumption in any container upon which the original closure has been broken, except for a growler or reusable container that is federally approved to hold a malt beverage, has a resealable closure and is properly labeled. Growlers may only be used by brewpubs. Further, licensees shall not allow beer or beverages dispensed for on-premises consumption to be removed from authorized areas upon the premises.

C. Novel or unusual containers.

Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual the board may consider, but is not limited to, the factors set forth in § 3 of this regulation.

D. Opening devices.

No retail beer licensee shall sell at retail any beer or beverage packaged in a metal container designed and constructed with an opening device that detaches from the container when the container is opened in a manner normally used to empty the contents of the container.

§ 5. Beer and beverages; qualifying procedures; samples; exceptions; disqualifying label factors.

A. Qualifying procedures.

Beer and beverages sold in this the Commonwealth shall be first approved by the board as to content, container

Proposed Regulations

and label.

1. A certification acceptable to the board or on a form prescribed by the board describing the merchandise may accompany each new brand and type of beer or beverages offered for sale in the state Commonwealth. A certification fee and a registration fee in such amounts as may be established by the board shall be included with each new certification.

2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; provided, however, that beer and beverages offered for sale in another state with which this the Commonwealth has an analysis and certification exchange agreement shall be subject only to a registration fee in such amounts as may be established by the board.

3. All beer and beverages sold in this the Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

4. Subsequent sales under an approved label shall conform to the certification or analysis of the beer or beverages originally approved by the board.

B. Samples.

A person holding a license as a brewery licensee or as a wholesale beer distributor licensee shall upon request furnish the board without compensation a reasonable quantity of each brand of beer or beverage sold by him for chemical analysis; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification.

C. Exceptions.

Any beer or beverage whose contents, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such beer or beverage was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container.

D. Disqualifying factors as to labels.

While not limited thereto, the board may withhold approval of any label which contains any statement, depiction or reference that:

1. Implies or indicates that the product contains wine or spirits;

2. Implies the product contains above average alcohol for beer;

3. Is suggestive of intoxicating effects;

4. Would tend to induce minors to consume drink;

5. Would tend to induce persons to consume to excess;

6. Is obscene, lewd or indecent;

7. Implies or indicates that the product is government (federal, state or local) endorsed;

8. Implies the product enhances athletic prowess or implies such by any reference to any athlete, former athlete or athletic team;

9. Implies endorsement of the product by any prominent living person;

10. Makes any humorous or frivolous reference to any intoxicating drink.

V.A.R. Doc. No. R94-36; Filed September 24, 1993, 11:41 a.m.

* * * * *

Title of Regulation: VR 125-01-5. Retail Operations.

Statutory Authority: §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia.

Public Hearing Date: December 20, 1993 - 10 a.m.

Written comments may be submitted through December 17, 1993.

(See Calendar of Events section for additional information)

Basis: §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia. Authority of the board to promulgate regulations generally; and to do all acts necessary and advisable to carry out the purposes of Title 4.1 of the Code of Virginia.

Purpose: To amend §§ 1 through 22 generally so as to conform to the 1993 recodification of Title 4 and Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and other technical changes as they relate to recodification; to make changes in style or form to §§ 6, 9, 11, 13, 19 and 20; to clarify when and under what circumstances special agents shall have access to places where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold for inspecting such places; to clarify when and under what circumstances law-enforcement officers or special agents shall have access to licensed retail premises for observing activities on those premises; to define "reasonable hours"; to require restaurants to sell meals or other foods at substantially all hours that alcoholic beverages are sold; to clarify what the penalty is for impeding or obstructing law-enforcement

Proposed Regulations

officers, including special agents, in the performance of their official duties; to make the records retention period consistent with proposed amendments to VR 125-01-7 § 9; and to comply with 1993 statutory amendments.

Substance:

1. Update the sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages."
2. Amend § 7 to clarify that special agents shall be given free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold for the purpose of examining and inspecting such place.
3. Amend § 7 to provide that special agents and other law-enforcement officers in the performance of their official duties shall be allowed free access during reasonable hours to any retail licensed establishment for observing activities on those licensed premises.
4. Amend § 7 to make it unlawful for any person who by use of threats, force or intimidation impedes or obstructs any special agent or other law-enforcement officer in the performance of his official duties from entering or remaining upon any licensed establishment and to clarify that such violations shall constitute Class 1 misdemeanors.
5. Amend § 7 to define "reasonable hours" to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.
6. Amend § 11 to require wine and beer or beer only restaurants to sell meals or other foods, as the case may be, at substantially all hours that wine and beer are offered for sale.
7. Amend § 18 to increase from two years to three years the retention period for records required of banquet facility licensees of off-site affairs and events.
8. Amend § 11 to require a hotel to have four or more bedrooms.

Issues:

1. To comply with the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and changes merely technical in nature.
2. To clarify when and under what circumstances special agents shall have access to places where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold for inspecting such places.

3. To clarify when and under what circumstances law-enforcement officers or special agents shall have access to licensed retail places for observing activities in such places.

4. To clarify that it is a punishable offense to impede or obstruct special agents and other law-enforcement officers in the performance of their official duties while on licensed premises.

5. To require that food be available at substantially all hours while alcoholic beverages are being sold to reduce the potential of over indulgence of alcohol.

6. To attain consistency and uniformity in all records retention requirements.

7. To comply with 1993 statutory amendments to §§ 4.1-100 and 4.1-210 of the Code of Virginia.

Impact:

1. All ABC licensees (approximately 13,532 as of 8/1/93) located within and outside the Commonwealth will be affected by recodification. All retail licensees (approximately 13,056 as of 8/1/93) will be affected by special agents and law-enforcement officers' access during reasonable hours to their retail licensed establishments, and penalties for obstruction of special agents and law-enforcement officers. All retail wine and beer and beer only on-premises licensees (approximately 6,137 as of 8/1/93) will be affected by the requirement that food be sold at substantially all hours that wine and beer are offered for sale. All banquet facility licensees (approximately 25 as of 7/1/93) will be affected by record keeping changes.

2. There will not be any additional costs associated with the agency's implementation of these amendments.

3. The cost of compliance for licensees to sell meals or other foods at substantially all hours that wine and beer are offered for sale is difficult to estimate because licensees will incur different costs for keeping their kitchens open. The cost of compliance for keeping records for an additional year is difficult to estimate because licensees will incur different storage costs. There will not be any additional compliance costs associated with the other amendments to VR 125-01-5.

Summary:

The proposed amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages"; (ii) amend § 7 to clarify that special agents shall be given free access during reasonable hours to every place in the Commonwealth where alcoholic beverages

are manufactured, bottled, stored, offered for sale or sold for the purpose of examining and inspecting such place; (iii) amend § 7 to provide that special agents and other law-enforcement officers in the performance of their official duties shall be allowed free access during reasonable hours to any retail licensed establishment for observing activities on those licensed premises; (iv) amend § 7 to make it unlawful for any person who by use of threats, force or intimidation impedes or obstructs any special agent or other law-enforcement officer in the performance of his official duties from entering or remaining upon any licensed establishment and to clarify that such violations shall constitute Class 1 misdemeanors; (v) amend § 7 to define "reasonable hours" to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises; (vi) amend § 11 to require wine and beer or beer only restaurants to sell meals or other foods, as the case may be, at substantially all hours that wine and beer are offered for sale; (vii) amend § 11 to require a hotel to have four or more bedrooms; and (viii) amend § 18 to increase from two years to three years the retention period for records required of banquet facility licensees of off-site affairs and events.

VR 125-01-5. Retail Operations.

§ 1. Restrictions upon sale and consumption of alcoholic beverages and beverages .

A. Prohibited sales.

Except as may be otherwise permitted under §§ 4-48 or 4-50 subdivisions 1 through 5 of § 4.1-200 of the Code of Virginia, no licensee shall sell any alcoholic beverage or beverage to a person whom he shall know, or have reason at the time to believe, is:

1. Under the age of 21 years;
2. Intoxicated; or
3. An interdicted person.

B. Prohibited consumption.

No licensee shall allow the consumption of any alcoholic beverage or beverage upon his licensed premises by any person to whom such alcoholic beverage or beverage may not lawfully be sold under this section.

§ 2. Determination of legal age of purchaser.

A. In determining whether a licensee, or his employee or agent, has reason to believe that a purchaser is not of legal age, the board will consider, but is not limited to, the following factors:

1. Whether an ordinary and prudent person would

have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior and manner of the purchaser; and

2. Whether the seller demanded, was shown and acted in good faith in reliance upon bona fide evidence of legal age, as defined herein, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser.

B. Such bona fide evidence of legal age shall include a valid motor vehicle driver's license issued by any state of the United States or the District of Columbia, armed forces identification card, United States passport or foreign government visa, valid special identification card issued by the Virginia Department of Motor Vehicles, or any valid identification issued by any other federal or state government agency, excluding student university and college identification cards, provided such identification shall contain a photograph and signature of the subject, with the subject's height, weight and date of birth.

C. It shall be incumbent upon the licensee, or his employee or agent, to scrutinize carefully the identification, if presented, and determine it to be authentic and in proper order. Identification which has been altered so as to be apparent to observation or has expired shall be deemed not in proper order.

§ 3. Restricted hours; exceptions.

A. Generally.

The hours during which licensees shall not sell or permit to be consumed upon their licensed premises any wine, beer ; beverages or mixed beverages shall be as follows:

1. In localities where the sale of mixed beverages has been authorized:

a. For on-premises sale and consumption: 2 a.m. to 6 a.m.

b. For off-premises sale: 12 a.m. to 6 a.m.

2. In all other localities: 12 a.m. to 6 a.m. for on-premises sales and consumption and off-premises sales, except that on New Year's Eve the licensees shall have an additional hour in which to exercise the on-premises privileges of their licenses.

B. Exceptions:

1. Club licensees: No restrictions at any time;
2. Individual licensees whose hours have been more stringently restricted by the board shall comply with such requirements; and

Proposed Regulations

3. Licensees in the City of Danville are prohibited from selling wine and beer for off-premises consumption between the hours of 1 a.m. and 6 a.m.

§ 4. Designated managers of licensees; appointment generally; disapproval by board; restrictions upon employment.

A. Generally.

Each licensee, except a licensed individual who is on the premises, shall have a designated manager present and in actual charge of the business being conducted under the license at any time the licensed establishment is kept open for business, whether or not the privileges of the license are being exercised. The name of the designated manager of every retail and mixed beverage licensee shall be kept posted in a conspicuous place in the establishment, in letters not less than one inch in size, during the time he is in charge.

The posting of the name of a designated manager shall qualify such person to act in that capacity until disapproved by the board.

B. Disapproval of designated manager.

The board reserves the right to disapprove any person as a designated manager if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has committed any act that would justify the board in suspending or revoking a license.

Before disapproving a designated manager, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of the Alcoholic Beverage Control Act Title 4.1 of the Code of Virginia .

C. Restrictions upon employment.

No licensee of the board shall knowingly permit a person under 21 years of age, nor one who has been disapproved by the board within the preceding 12 months, to act as designated manager of his business.

§ 5. Restrictions upon employment of minors.

No person licensed to sell alcoholic beverages or beverages at retail shall permit any employee under the age of 18 years to sell, serve or dispense in any manner any alcoholic beverage or beverage in his licensed establishment for on-premises consumption, nor shall such person permit any employee under the age of 21 years to prepare or mix alcoholic beverages or beverages in the capacity of a bartender. "Bartender" is defined as a person who sells, serves or dispenses alcoholic beverages for on-premises consumption at a counter, as defined in § 11 of this regulation, and does not include a person employed to serve food and drink to patrons at tables as

defined in that section. However, a person who is 18 years of age or older may sell or serve beer for on-premises consumption at a counter in an establishment that sells beer only.

§ 6. Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers ; employment of minors .

A. Generally.

No mixed beverage restaurant or carrier licensee shall:

1. Preparation to order. Prepare, other than in frozen drink dispensers of types approved by the board, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.

2. Limitation on sale *servng* . Serve as one drink the entire contents of any spirits containers having a greater capacity than a "miniature" of two fluid ounces or 50 milliliters, nor allow any patron to possess more than two drinks of mixed beverages at any one time. "Miniatures" may be sold by carriers and by retail establishments licensed as hotels, or restaurants upon the premises of a hotel, to sell mixed beverages. However, such licensees, other than carriers, may sell miniatures only for consumption in bedrooms and in private rooms during a scheduled private function. *Serve as one drink the entire contents of a container of spirits in its original container for on-premises consumption except as provided by subsections C and D.*

3. Types of ingredients. Sell any mixed beverage to which alcohol has been added.

B. Mixed beverage restaurant licensees.

No mixed beverage restaurant licensee shall:

1. Stamps and identification. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license which does not bear the required mixed beverage stamp imprinted with his license number and purchase report number.

2. Source of ingredients. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine distributor licensee .

3. Empty container. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.

4. Miniatures. Sell any spirits in a container having a capacity of two fluid ounces or less, or 50 milliliters. *Limitation on possession. Allow any patron to possess more than two drinks of mixed beverages at any one*

time.

C. Sales of spirits in closed containers.

If a restaurant for which a mixed beverage restaurant license has been issued under § ~~4-98.2~~ 4.1-210 of the Code of Virginia is located on the premises of and in a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packages packaged in original closed containers purchased from the board, as well as other alcoholic beverages and beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;
2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;
3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages and beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and
4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Employment of minors.

No mixed beverage licensee shall employ a person less than 18 years of age in or about that portion of his licensed establishment used for the sale and consumption of mixed beverages; provided, however, that this shall not be construed to prevent the licensee from employing such a person in such portion of his establishment for the purpose of:

1. Seating customers or busing tables when customers generally are purchasing meals;
2. Providing entertainment or services as a member or staff member of an otherwise adult or family group which is an independent contractor with the licensee for that purpose; or

3. Providing entertainment when accompanied by or under the supervision of a parent or guardian.

D. Miniatures.

Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters, in their original containers, for on-premises consumption.

§ 7. Restrictions on construction, arrangement and lighting of rooms and seating of licensees: licensed premises; inspections; obstruction; "reasonable hours."

A. The construction, arrangement and illumination of the dining rooms areas and designated rooms areas and the seating arrangements therein of a licensed establishment shall be such as to permit ready access and reasonable observation by law-enforcement officers and by special agents of the board. The interior lighting shall be sufficient to permit ready discernment of the appearance and conduct of patrons in all portions of such rooms areas

B. The board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting such place.

C. In addition to special agents, other law-enforcement officers in the performance of their official duties shall be allowed free access to any retail licensed establishment for the purpose of observation of activities on those licensed premises during reasonable hours.

D. Any person who by use of threats, force or intimidation impedes or obstructs any special agent or other law-enforcement officer in the performance of his official duties from entering or remaining upon any licensed establishment shall be guilty of a violation of this regulation and shall be subject to the penalty prescribed by § 4.1-349 of the Code of Virginia.

E. For the purposes of this regulation, the term "reasonable hours" shall be deemed to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

§ 8. Entreating, urging or enticing patrons to purchase prohibited.

No retail licensee shall entreat, urge or entice any patron of his establishment to purchase any alcoholic beverage or beverage; nor shall such licensee allow any other person to so entreat, urge or entice a patron upon his licensed premises. Entreating, urging or enticing shall include, but not be limited to, placing alcoholic beverages in containers of ice which are visible, located in public display areas and available to patrons of retail establishments for off-premises sales. Knowledge by a

Proposed Regulations

manager of the licensee of a violation of this section shall be imputed to the licensee.

This section shall not be construed to prohibit the taking of orders in the regular course of business, the purchase of a drink by one patron for another patron as a matter of normal social intercourse, nor advertising in accordance with regulations of the board.

§ 9. Storage of alcoholic beverages ~~and beverages~~ generally; permits for storage; exception.

A. Generally.

Alcoholic beverages ~~and beverages~~ shall not be stored at any premises other than those described in the license, except upon a permit issued by the board.

B. Procedures under permits.

The licensee shall maintain at all times as a part of the records required by VR 125-01-7 ; § 9, an accurate inventory reflecting additions to and withdrawals of stock. Withdrawals shall specify:

1. The name of the person making the withdrawal who shall be the licensee or his duly authorized agent or servant;
2. The amount withdrawn; and
3. The place to which transferred.

C. Exception.

Draft beer ~~and draft beverages~~ may be stored without permit by a wholesaler at a place licensed to do a warehousing business in ~~Virginia~~ *the Commonwealth* .

§ 10. Definitions and qualifications for retail off-premises wine and beer licenses and off-premises beer licenses; exceptions; further conditions; temporary licenses.

A. Wine and beer.

Retail off-premises wine and beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. "Delicatessen." An establishment which sells a variety of prepared foods or foods requiring little preparation such as cheeses, salads, cooked meats and related condiments:

Monthly sales \$2,000
Inventory (cost) \$2,000

2. "Drugstore." An establishment selling medicines

prepared by a registered pharmacist according to prescription and other medicines and articles of home and general use;

Monthly sales \$2,000
Inventory (cost) \$2,000

3. "Grocery store." An establishment which sells edible items intended for human consumption, including a variety of staple foodstuffs used in the preparation of meals:

Monthly sales \$2,000
Inventory (cost) \$2,000

4. "Convenience grocery store." An establishment which has an enclosed room in a permanent structure where stock is displayed and offered for sale, and which sells edible items intended for human consumption, consisting of a variety of such items of the type normally sold in grocery stores ; ~~and does not sell any petroleum related service with the sale of petroleum products :~~

Monthly sales \$2,000
Inventory (cost) \$2,000

In regard to both grocery stores and convenience grocery stores, "edible items" shall mean such items normally used in the preparation of meals, including liquids, and which shall include a variety (at least five) of representative items from each of the basic food groups: dairy, meat, grain, vegetables and fruit.

5. "~~Specialty shop.~~" "Gourmet shop." An establishment provided with adequate shelving and storage facilities which sell products such as ~~cheese~~ *cheeses* and gourmet foods:

Monthly sales \$2,000
Inventory (cost) \$2,000

B. Beer.

Retail off-premises beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. "Delicatessen." An establishment as defined in subsection A:

Monthly sales \$1,000
Inventory (cost) \$1,000

Proposed Regulations

2. "Drugstore." An establishment as defined in subsection A:

Monthly sales \$1,000

Inventory (cost) \$1,000

3. "Grocery store." An establishment as defined in subsection A:

Monthly sales \$1,000

Inventory (cost) \$1,000

4. "Marina store." An establishment operated by the owner of a marina which sells food and nautical and fishing supplies:

Monthly sales \$1,000

Inventory (cost) \$1,000

C. Exceptions.

The board may grant a license to an establishment not meeting the qualifying figures in subsections A and B provided it affirmatively appears that there is a substantial public demand for such an establishment and that public convenience will be promoted by the issuance of the license.

D. Further conditions.

The board in determining the eligibility of an establishment for a license shall give consideration to, but shall not be limited to, the following:

1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;
2. The extent to which a variety of edible items of the types normally found in grocery stores are sold; and
3. The extent to which such establishment is constructed, arranged or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.

E. Temporary licenses.

Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with the provisions of § 4-30 4.1-230 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a

reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

§ 11. Definitions and qualifications for retail on-premises and on- and off-premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.

A. Generally.

The following definitions shall apply to retail licensees and mixed beverage licensees where appropriate:

1. "Designated room." "Designated area." A room or area in which a licensee may exercise the privilege of his license, the location, equipment and facilities of which room or area have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale therein. The seating capacity of such room or area shall be included in determining eligibility qualifications for a mixed beverage restaurant.

2. "Dining car, buffet car or club car." A vehicle operated by a common carrier of passengers by rail, in interstate or intrastate commerce and in which food and refreshments are sold.

3. "Meals." In determining what constitutes a "meal" as the term is used in this section, the board may consider the following factors, among others:

- a. The assortment of foods commonly offered for sale;
- b. The method and extent of preparation and service required; and
- c. The extent to which the food served would be considered a principal meal of the day as distinguished from a snack.

4. "Habitual sales." In determining what constitutes "habitual sales" of specific foods, the board may consider the following factors, among others:

- a. The business hours observed as compared with similar type businesses;
- b. The extent to which such food or other merchandise is regularly sold; and

Proposed Regulations

c. Present and anticipated sales volume in such food or other merchandise.

5. "Sale" and "sell." The definition of "sale" and "sell" in VR 125-01-7 ; § 9 shall apply to this section.

B. Wine and beer.

Retail on- or on-and off-premises licenses may be granted to persons operating the following types of establishments provided *that meals or other foods are regularly sold at substantially all hours that wine and beer are offered for sale and the total monthly food sales for consumption in dining rooms areas and other designated rooms areas on the premises are not less than those shown:*

1. "Boat : " *(on premises only). A common carrier of passengers operating by water on regular schedules in interstate or intrastate commerce for which a certificate as a sight-seeing carrier by boat, or a special or charter party by boat has been issued by the State Corporation Commission , habitually serving food on the boat :*

Monthly sales \$2,000

2. "Restaurant." A bona fide dining establishment habitually selling meals with entrees and other foods prepared on the premises:

Monthly sales \$2,000

3. "Hotel." Any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, meals with entrees and other food prepared on the premises and lodging are habitually furnished to persons and which has ~~to~~ four or more bedrooms:

Monthly sales \$2,000

In regard to both restaurants and hotels, at least \$1,000 of the required monthly sales must be in the form of meals with entrees.

C. Beer.

Retail on- or on-and off-premises licenses may be granted to persons operating the following types of establishments provided *that food is regularly sold at substantially all hours that beer is offered for sale and the total monthly food sales for consumption in dining rooms areas and other designated areas on the premises are not less than those shown:*

1. "Boat : " *(on-premises only). A common carrier of passengers operating by water on regular schedules in interstate or intrastate commerce, habitually serving food See subdivision B 1 :*

Monthly sales \$2,000

2. "Restaurant." An establishment habitually selling food prepared on the premises:

Monthly sales \$2,000

3. "Hotel." See subdivision B 3;

Monthly sales \$2,000

4. "Tavern." An establishment where food and refreshment, including beer or beverages, are habitually sold for on-premises consumption.

D. Mixed beverage licenses.

The following shall apply to mixed beverage licenses where appropriate:

1. "Bona fide, full-service restaurant." An established place of business where meals with substantial entrees are habitually sold to persons and which has adequate facilities and sufficient employees for cooking, preparing and serving such meals for consumption at tables in dining rooms areas on the premises. In determining the qualifications of such restaurant, the board may consider the assortment of entrees and other food sold. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

2. "Monetary sales requirements." The monthly sale of food prepared on the premises shall not be less than \$4,000 of which at least \$2,000 shall be in the form of meals with entrees.

3. "Dining room." "Dining area." A public room or area in which meals are regularly sold at substantially all hours that mixed beverages are offered for sale therein.

4. "Outside terraces or patios." An outside terrace or patio, the location, equipment and facilities of which have been approved by the board may be approved as a "dining room area" or as a "designated room area" in the discretion of the board. A location adjacent to a public sidewalk, street or alley will not be approved where direct access is permitted from such sidewalk, street or alley by more than one well-defined entrance therefrom. The seating capacity of an outside terrace or patio if used regularly by those operations which are seasonal in nature, shall be included in determining eligibility qualifications. For purposes of this subdivision, the term "seasonal operations" is defined as an establishment that voluntarily surrenders its license to the board for part of its license year.

5. "Tables and counters."

a. A "table" shall include any article of furniture,

fixture or counter generally having a flat top surface supported by legs, a pedestal or a solid base, designed to accommodate the serving of food and refreshments (though such food and refreshments need not necessarily be served together), and to provide seating for customers. If any table is located between two-backed benches, commonly known as a booth, at least one end of the structure shall be open permitting an unobstructed view therein. In no event, shall the number of individual seats at free standing tables and in booths be less than the number of individual seats at counters.

b. This subdivision shall not be applicable to a room otherwise lawfully in use for private meetings and private parties limited in attendance to members and guests of a particular group.

E. Exceptions.

The board may grant a license to an establishment not meeting the qualifying figures in this section, provided the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

F. Temporary licenses.

Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with the provisions of § 4-30 4.1-230 of the Code of Virginia, and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

§ 12. Fortified wines; definitions and qualifications. (Repealed.)

A. Definition.

"Fortified wine" is defined as wine having an alcoholic content of more than 14% by volume but not more than 21%.

B. Qualifications.

~~Fortified wine may be sold for off-premises consumption by licensees authorized to sell wine for such consumption.~~

§ 13. Clubs; applications; qualifications; reciprocal arrangements; changes; financial statements.

A. Applications.

Each applicant for a club license shall furnish the following information:

1. A certified copy of the charter, articles of association or constitution;
2. A copy of the bylaws;
3. A list of the officers and directors showing names, addresses, ages and business employment;
4. The average number of members for the preceding 12 months. Only natural persons may be members of clubs; and
5. A financial statement for the latest calendar or fiscal year of the club, and a brief summary of the financial condition as of the end of the month next preceding the date of application.

B. Qualifications.

In determining whether an applicant qualifies under the statutory definition of a club, as well as whether a club license should be suspended or revoked, the board will consider, but is not limited to, the following factors:

1. The club's ~~objectives purposes~~ and its compliance with the ~~objectives purposes~~ ;
2. The club's qualification for tax exempt status from federal and state income taxes; and
3. The club's permitted use of club premises by nonmembers, including reciprocal arrangements.

C. Nonmember use.

The club shall limit nonmember use of club premises according to the provisions of this section and shall notify the board each time the club premises are used in accordance with this subdivision 1 below . The notice shall be received by the board at least two business days in advance of any such event.

1. A licensed club may allow nonmembers, who would otherwise qualify for a banquet or banquet special events license, to use club premises, where the privileges of the club license are exercised, 12 times per calendar year for public events held at the licensed premises, such events allowing nonmembers to attend and participate in the event at the licensed premises;

Proposed Regulations

2. A member of a licensed club may sponsor private functions on club premises for an organization or group of which he is a member, such attendees being guests of the sponsoring member; or

3. Notwithstanding subdivisions C 1 and C 2 above, a licensed club may allow its premises to be used no more than a total of 12 times per calendar year by organizations or groups who obtain banquet or banquet special events licenses.

Additionally, there shall be no limitation on the numbers of times a licensed club may allow its premises to be used by organizations or groups if alcoholic beverages are not served at such functions.

D. Special events licenses.

A licensed club may not obtain a banquet special events license or a mixed beverage special events license for use on its premises. However, a club may obtain a banquet special events license or a mixed beverage special events license not more than 12 times per calendar year upon the unlicensed portion of its premises.

E. Reciprocal arrangements.

Persons who are resident members of other clubs located at least 100 miles from the club licensed by the board (the "host club") and who are accorded privileges in the host club by reason of bona fide, prearranged reciprocal arrangements between the host club and such clubs shall be considered guests of the host club and deemed to have members' privileges with respect to the use of its facilities. The reciprocal arrangements shall be set out in a written agreement and approved by the board prior to the exercise of the privileges thereunder.

The mileage limitations of this subsection notwithstanding, members of private, nonprofit clubs or private clubs operated for profit located in separate cities which are licensed by the board to operate mixed beverage restaurants on their respective premises and which have written agreements approved by the board for reciprocal dining privileges may be considered guests of the host club and deemed to have members' privileges with respect to its dining facilities.

F. Changes.

Any change in the officers and directors of a club shall be reported to the board within 30 days, and a certified copy of any change in the charter, articles of association or by-laws shall be furnished the board within 30 days thereafter.

G. Financial statements.

Each club licensee shall prepare and sign an annual financial statement on forms prescribed by the board. The statement may be on a calendar year or fiscal year basis,

but shall be consistent with any established tax year of the club. The statement must be prepared and available for inspection on the club premises no later than 120 days next following the last day of the respective calendar or fiscal year, and each such statement must be maintained on the premises for a period of three consecutive years. In addition, each club holding a mixed beverage license shall be required to prepare and timely submit the mixed beverage annual review report required by VR 125-01-7 § 9 C D.

§ 14. Lewd or disorderly conduct.

While not limited thereto, the board shall consider the following conduct upon any licensed premises to constitute lewd or disorderly conduct:

1. The real or simulated display of any portion of the genitals, pubic hair or buttocks, or any portion of the breast below the top of the areola, by any employee, or by any other person; except that when entertainers are on a platform or stage and reasonably separated from the patrons of the establishment, they shall be in conformity with subdivision 2;

2. The real or simulated display of any portion of the genitals, pubic hair or anus by an entertainer, or any portion of the areola of the breast of a female entertainer. When not on a platform or stage and reasonably separate from the patrons of the establishment, entertainers shall be in conformity with subdivision 1;

3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any other sexual act prohibited by law, by any person, whether an entertainer or not; or

4. The fondling or caressing by any person, whether an entertainer or not, of his own or of another's breast, genitals or buttocks.

§ 15. Off-premises deliveries on licensed retail premises; "drive through" establishments.

No person holding a license granted by the board which authorizes the licensee to sell wine or beer at retail for consumption off the premises of such licensee shall deliver such wine or beer to a person on the licensed premises other than in the licensed establishment. Deliveries of such merchandise to persons through windows, apertures or similar openings at "drive through" or similar establishments, whether the persons are in vehicles or otherwise, shall not be construed to have been made in the establishments. No sale or delivery of such merchandise shall be made to a person who is seated in a vehicle.

~~The provisions of this section shall be applicable also to the delivery of beverages.~~

Proposed Regulations

§ 16. Happy hour and related promotions; definitions; exceptions.

A. Definitions.

1. "Happy Hour." A specified period of time during which alcoholic beverages are sold at prices reduced from the customary price established by a retail licensee.

2. "Drink." Any beverage containing the amount of alcoholic beverages customarily served to a patron as a single serving by a retail licensee.

B. Prohibited practices.

No retail licensee shall engage in any of the following practices:

1. Conducting a happy hour between 9 p.m. of each day and 2 a.m. of the following day;
2. Allowing a person to possess more than two drinks at any one time during a happy hour;
3. Increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the customary or established retail price charged for such drink;
4. Selling two or more drinks for one price, such as "two for one" or "three for one";
5. Selling pitchers of mixed beverages;
6. Giving away drinks;
7. Selling an unlimited number of drinks for one price, such as "all you can drink for \$5.00"; or
8. Advertising happy hour in the media or on the exterior of the licensed premises.

C. Exceptions.

This regulation shall not apply to prearranged private parties, functions, or events, not open to the public, where the guests thereof are served in a room or rooms designated and used exclusively for private parties, functions or events.

§ 17. Caterer's license.

A. Qualifications.

Pursuant to § ~~4-98.2(e)~~ 4.1-210 A 2 of the Code of Virginia, the board may grant a caterer's license to any person:

1. Engaged on a regular basis in the business of providing food and beverages to persons for service at

private gatherings, or at special events as defined in § ~~4-2~~ 4.1-100 of the Code of Virginia or as provided in § ~~4-98.2(e)~~ 4.1-210 A 3 of the Code of Virginia, and

2. With an established place of business with catering gross sales average of at least \$4,000 per month and who has complied with the requirements of the local governing body concerning sanitation, health, construction or equipment and who has obtained all local permits or licenses which may be required to conduct such a catering business.

B. Privileges.

The license authorizes the following:

1. The purchase of spirits, vermouth and wine produced by farm wineries from the board;
2. The purchase of wine and cider from licensed wholesalers or farm wineries or the purchase of beer ~~or 2-2~~ beverages from licensed wholesalers;
3. The retail sale of alcoholic beverages ~~or mixed beverages~~ to persons who sponsor the private gatherings or special events described in subsection A or directly to persons in attendance at such events. No banquet or mixed beverage special events license is required in either case; and
4. The storage of alcoholic beverages purchased by the caterer at the established and approved place of business.

C. Restrictions and conditions.

In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons licensed as caterers:

1. Alcoholic beverages may be sold only for on-premises consumption to persons in attendance at the gathering or event;
2. The records required to be kept by § 9 of VR 125-01-7 shall be maintained by caterers. If the caterer also holds other alcoholic ~~beverages~~ beverage licenses, he shall maintain the records relating to his caterer's business separately from the records relating to any other license. Additionally, the records shall include the date, time and place of the event and the name and address of the sponsoring person or group of each event catered;
3. The annual gross receipts from the sale of food cooked and prepared for service at gatherings and events referred to in this regulation and nonalcoholic beverages served there shall amount to at least 45% of the gross receipts from the sale of mixed beverages and food;

Proposed Regulations

4. The caterer shall notify the board in writing at least two calendar days in advance of any events to be catered under his license for the following month. The notice shall include the date, time, location and address of the event and the name of the sponsoring person, group, corporation or association;

5. Persons in attendance at a private event at which alcoholic beverages are served but not sold under the caterer's license may keep and consume their own lawfully acquired alcoholic beverages;

6. The private gathering referred to in subsection A above shall be a social function which is attended only by persons who are specifically and individually invited by the sponsoring person or organization, not the caterer;

7. The licensee shall insure that all functions at which alcoholic beverages are sold are ones which qualify for a banquet license, for a special event license or a mixed beverage special events license. Licensees are entitled to all services and equipment now available under a banquet license from wholesalers;

8. A photocopy of the caterer's license must be present at all events at which the privileges of the license are exercised; and

9. The caterer's license shall be considered a retail license for purposes of § ~~4-79.1~~ 4.1-216 of the Code of Virginia.

§ 18. Volunteer fire departments or volunteer rescue squads; banquet facility licenses.

A. Qualifications.

Pursuant to § ~~4-25(p)~~ 4.1-206.3 of the Code of Virginia, the board may grant banquet facility licenses to volunteer fire departments and volunteer rescue squads:

1. Providing volunteer fire or rescue squad services;
2. Having as its premises a fire or rescue squad station regularly occupied by such fire department or rescue squad; and
3. Being duly recognized by the governing body of the city, county or town in which it is located.

B. Privileges.

The license authorizes the following:

The consumption of legally acquired alcoholic beverages on the premises of the licensee or on premises other than such fire or rescue squad station which are occupied and under the control of the licensee while the privilege of its license is being exercised, by any person, association, corporation or

other entity, including the fire department or rescue squad, and bona fide members and guests thereof, otherwise eligible for a banquet license and entitled to such privilege for a private affair or special event.

C. Restrictions and conditions.

In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons holding such banquet facility licenses:

1. Alcoholic beverages cannot be sold or purchased by the licensee;
2. Alcoholic beverages cannot be sold or charged for in any way by the person, association, corporation or other entity permitted to use the premises;
3. The private affair referred to in ~~subdivision B 1~~ subsection B shall be a social function which is attended only by persons who are members of the association, corporation or other entity, including the fire department or rescue squad, and their bona fide guests;
4. The volunteer fire department or rescue squad shall notify the board in writing at least two calendar days in advance of any affair or event at which the license will be used away from the fire department or rescue squad station. The notice shall include the date, time, location and address of the event and the identity of the group, and the affair or event. Such records of off-site affairs and events should be maintained at the fire department or rescue squad station for a period of ~~two~~ three years;
5. A photocopy of the banquet facility license shall be present at all affairs or events at which the privileges of the license are exercised away from the fire or rescue squad station; and
6. The fire department or rescue squad shall comply with the requirements of the local governing body concerning sanitation, health, construction or equipment and shall obtain all local permits or licenses which may be required to exercise the privilege of its license.

§ 19. Bed and breakfast licenses.

A. Qualifications.

Pursuant to § ~~4-25(A)(22)~~ 4.1-206.4 of the Code of Virginia, the board may grant a bed and breakfast license to any person who operates an establishment consisting of:

1. No more than 15 bedrooms available for rent;
2. Offering to the public, for compensation, transitory lodging or sleeping accommodations; and

Proposed Regulations

3. Offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

B. Conditions.

In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons licensed as bed and breakfast establishments:

1. Alcoholic beverages served under the privileges conferred by the license must be purchased from a Virginia A.B.C. government store, wine or beer wholesaler or farm winery;
2. Alcoholic beverages may be served for on-premises consumption to persons who are registered, overnight guests and are of legal age to consume alcoholic beverages;
3. Lodging, meals and service of alcoholic beverages shall be provided at one general price and no additional charges, premiums or surcharges shall be exacted for the service of alcoholic beverages;
4. Alcoholic beverages may be served in dining rooms and areas, private guest rooms and other designated rooms areas, including bedrooms, outside terraces or patios;
5. The bed and breakfast establishment upon request or order of lodgers making overnight reservations, may purchase and have available for the lodger upon arrival, any alcoholic beverages so ordered, provided that no premium or surcharge above the purchase price of the alcoholic beverages may be exacted from the consumer for this accommodation purchase;
6. Alcoholic beverages purchased under the license may not be commingled or stored with the private stock of alcoholic beverages belonging to owners of the bed and breakfast establishment; and
7. The bed and breakfast establishment shall maintain complete and accurate records of the purchases of alcoholic beverages and provide sufficient evidence that at least one meal per day is offered to persons to whom overnight lodging is provided.

§ 20. Specialty stores and gift shops Gift shops; wine and beer off-premises and wine off-premises licenses; conditions; records; inspections.

A. Qualifications.

Pursuant to the provisions of §§ 4-25 A 13 and 4-25 A 23 § 4.1-209.7 of the Code of Virginia, the board may grant (i) retail wine and beer off-premises licenses to persons operating a registered historical site or museum specialty store or (ii) retail wine off-premises licenses to persons

operating gift shops. Such gift shop may be located (i) on the premises or grounds of a government registered national, state or local historic building or site or (ii) within the premises of a museum.

B. Restrictions and conditions.

1. A historical site or museum specialty store shall be defined as (i) any bona fide retail store selling, predominately, gifts, books, souvenirs and specialty items relating to history, in general, or to the site or any exhibits; (ii) located on the premises or grounds of a government registered national, state or local historic building or site and which is open to the public on a regular basis; or (iii) which is located within the premises of a museum which is open to the public on a regular basis and (iv) provided in either case that such store is located within a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer.

2. 1. A gift shop shall be defined as any bona fide retail store selling, predominately, (i) floral arrangements or handmade arts and crafts, which may include a combination of gifts, books, souvenirs, specialty items, collectibles, or other original and handmade products; and (ii) which is open to the public on a regular basis in a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer.

3. 2. The board may shall consider the purpose, characteristics, nature, and operation of the applicant establishment in determining whether it shall be considered as a specialty store or gift shop within the meaning of this section.

4. 3. Specialty store and gift shop retail Gift shop licenses, pursuant to this regulation, shall be granted only to persons who have places of business which have been in operation for no less than 12 months next preceding the filing of the application.

5. 4. Specialty store and gift shop retail Gift shop licenses shall authorize the licensees to sell at retail alcoholic beverages in accordance with their license privileges wine and beer, which have been purchased from and received at the establishment from farm winery or wholesale licensees of the board, to sell such alcoholic beverages only in closed packages for consumption off the premises, to sell such alcoholic beverages unchilled only within the interior premises of the store gift shop in closed containers for off-premises consumption, and to deliver or ship the same to purchasers thereof in accordance with Title 4 4.1 of the Code of Virginia and regulations of the board. No chilled alcoholic beverages may be sold under the privileges of the specialty store or gift shop retail license.

Proposed Regulations

6. 5. In granting licenses under the provisions of this regulation, the board may impose restrictions and conditions upon purchases and sales of wine and beer in accordance with this regulation or as may be deemed reasonable by the board to ensure that the distribution of alcoholic beverages is orderly, lawful and only incidental to the principal business of the licensee. In no event may the sale of such alcoholic beverages exceed 25% of total annual gross sales at the establishment.

7. 6. Every person licensed to sell alcoholic beverages under the provisions of this regulation shall comply with VR 125-01-7 § 9.

§ 21. Manner of compensation of employees of retail licensees.

Employees of a retail licensee shall not receive compensation based directly, in whole or in part, upon the volume of alcoholic beverages or beverages sales only; provided, however, that in the case of retail wine and beer or beer only licensees, nothing in this section shall be construed to prohibit a bona fide compensation plan based upon the total volume of sales of the business, including receipts from the sale of alcoholic beverages or beverages .

§ 22. Interests in the businesses of licensees.

Persons to whom licenses have been issued by the board shall not allow any other person to receive a percentage of the income of the licensed business or have any beneficial interest in such business; provided, however, that nothing in this section shall be construed to prohibit:

1. The payment by the licensee of a franchise fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted upon the licensed premises, where such is reasonable as compared to prevailing franchise fees of similar businesses; or

2. Where the licensed business is conducted upon leased premises, and the lease when construed as a whole does not constitute a shift or device to evade the requirements of this section:

a. The payment of rent based in whole or in part upon a percentage of the entire gross receipts of the business, where such rent is reasonable as compared to prevailing rentals of similar businesses; and

b. The landlord from imposing standards relating to the conduct of the business upon the leased premises, where such standards are reasonable as compared to prevailing standards in leases of similar businesses, and do not unreasonably restrict the control of the licensee over the sale and consumption of mixed beverages; other alcoholic

beverages ; or beverages .

V.A.R. Doc. No. R94-37; Filed September 24, 1993, 11:42 a.m.

* * * * *

Title of Regulations: VR 125-01-6. Manufacturers and Wholesalers Operations.

Statutory Authority: §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia.

Public Hearing Date: December 20, 1993 - 10 a.m.

Written comments may be submitted through December 17, 1993.

(See Calendar of Events section for additional information)

Basis: §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia. Authority of the board to promulgate regulations generally; and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia.

Purpose: To amend §§ 1 through 9 generally so as to conform to the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and other technical changes as they relate to recodification; to make changes in style or form to §§ 1, 2, 4, 5, 6, 8 and 9; and to make the records retention period consistent with proposed amendments to VR 125-01-7 § 9.

Substance:

1. Update the sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages."

2. Amend §§ 1 and 8 to increase from two years to three years the retention period for records required of wine and beer solicitor salesmen and spirits solicitors reflecting all expenses incurred by them in connection with the solicitation of the sale of their employers' products.

3. Amend § 5 to increase from two years to three years the retention period for records required of persons holding a distiller's, fruit distiller's, winery or farm winery license and to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours."

Issues:

1. To comply with the 1993 recodification of Title 4 into new Title 4.1 including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and changes merely technical in nature.

Proposed Regulations

2. To attain consistency and uniformity in all records retention requirements.

Impact:

1. All ABC licensees (approximately 13,532 as of 8/1/93) located within and outside the Commonwealth will be affected by recodification. All wine and beer solicitor salesmen, spirits solicitors and persons holding distiller's, fruit distiller's, winery and farm winery licenses (approximately 352 as of 8/1/93) will be affected by record keeping changes.

2. There will not be any additional costs associated with the agency's implementation of these amendments.

3. The cost of compliance for keeping records for an additional year is difficult to estimate because licensees and permittees will incur different storage costs. There will not be any additional compliance costs associated with the other amendments to VR 125-01-6.

Summary:

The proposed amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages"; (ii) amend §§ 1 and 8 to increase from two years to three years the retention period for records required of wine and beer solicitor salesmen and spirits solicitors reflecting all expenses incurred by them in connection with the solicitation of the sale of their employers' products; and (iii) amend § 5 to increase from two years to three years the retention period for records required of persons holding a distiller's, fruit distiller's, winery or farm winery license and to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours."

VR 125-01-6. Manufacturers and Wholesalers Operations.

§ 1. Solicitor salesmen; records; employment restrictions; suspension or revocation of permits.

A. Records.

A solicitor salesman employed by any ~~nonresident person~~ *out-of-state wholesaler* to solicit the sale of or sell wine or beer at ~~wholesale~~ shall keep complete and accurate records for a period of ~~two~~ *three* years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a certified copy of such records.

B. Restrictions upon employment.

A solicitor salesman must be 18 years old or older to solicit the sale of ~~beer wine or wine beer~~ and may not be employed at the same time by a ~~nonresident person engaged in the sale of beer or wine at wholesale~~ *an out-of-state wholesaler* and by a licensee of the ~~board~~ to solicit the sale of or sell wine or beer.

C. Suspension or revocation of permit.

The board may suspend or revoke the permit of a solicitor salesman if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

Before suspending or revoking such permit, the board shall accord the solicitor salesman the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of the ~~Alcoholic Beverage Control Act Title 4.1 of the Code of Virginia~~.

§ 2. Wines; purchase orders generally; wholesale wine ~~distributors licensees~~.

A. Purchase orders generally.

Purchases of wine ~~from the board, between licensees of the board and between the board,~~ licensees and or persons outside the Commonwealth shall be executed only ~~for orders~~ on order forms prescribed by the board and provided at cost if supplied by the ~~board~~ department.

B. Wholesale wine ~~distributors licensees~~.

Wholesale wine ~~distributors licensees~~ shall comply with the following procedures:

1. Purchase orders. A copy of each purchase order for wine and a copy of any change in such order shall be forwarded to the board by the wholesale wine ~~distributor~~ licensee at the time the order is placed or changed. Upon receipt of shipment, one copy of such purchase order shall be forwarded to the board by the ~~distributor~~ licensee reflecting accurately the date received and any changes.

2. Sales in the Commonwealth. Separate invoices shall be used for all nontaxed wine sales in the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale.

3. Out-of-state sales. Separate sales invoices shall be used for wine sold outside the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale.

4. Peddling. Wine shall not be peddled to retail licensees.

Proposed Regulations

5. Repossession. Repossession of wine sold to a retailer shall be accomplished on forms prescribed by the board and provided at cost if supplied by the board, and in compliance with the instructions on the forms.

6. Reports to the board. Each month wholesale wine ~~distributors~~ licensees shall, on forms prescribed by the board and in accordance with the instructions set forth therein, report to the board the purchases and sales made during the preceding month, and the amount of state wine tax collected from retailers pursuant to ~~§ 4-22-1~~ §§ 4.1-234 and 4.1-235 of the Code of Virginia. Each wholesale wine ~~distributor~~ licensee shall on forms prescribed by the board on a quarterly basis indicate ~~to the board~~ the quantity of wine on hand at the close of business on the last day of the last month of the preceding quarter based on actual physical inventory by brands. Reports shall be accompanied by remittance for the amount of taxes collected, less any refunds, replacements or adjustments and shall be postmarked no later than the fifteenth of the month, or if the fifteenth is not a business day, the next business day thereafter.

§ 3. Procedures for retail off-premises winery licenses; purchase orders; segregation, identification and storage.

A. Purchase orders.

Wine offered for sale by a retail off-premises winery licensee shall be procured on order forms prescribed by the board and provided at cost if supplied by the board. The order shall be accompanied by the correct amount of state wine tax levied by ~~§ 4-22-1~~ § 4.1-234 of the Code of Virginia, due the Commonwealth in cash, as defined in these regulations.

B. Segregation, identification and storage.

Wine procured for sale at retail shall be segregated from all other wine and stored only at a location on the premises approved by the board. The licensee shall place his license number and the date of the order on each container of wine so stored for sale at retail. Only wine acquired, segregated, and identified as herein required may be offered for sale at retail.

§ 4. Indemnifying bond required of wholesale wine ~~distributors~~ licenses .

No wholesale wine ~~distributor's~~ license shall be issued unless there shall be on file with the board an indemnifying bond running to the Commonwealth of Virginia in the penalty of \$1,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth of Virginia as surety, conditioned upon the faithful compliance with requirements of ~~the Alcoholic Beverage Control Act Title 4.1 of the Code of Virginia~~ and the regulations of the board.

A wholesale wine ~~distributor~~ licensee may request in writing a waiver of the surety and the bond by the board. If the waiver is granted, the board may withdraw such waiver of surety and bond at any time for good cause.

§ 5. Records required of distillers, fruit distillers, winery licensees and farm winery licensees; procedures for distilling for another; farm wineries.

A person holding a distiller's ~~license~~, a , fruit distiller's ~~license~~, a , winery ~~license~~, or a farm winery license shall comply with the following procedures:

1. Records. Complete and accurate records shall be kept at the licensee's place of business for a period of ~~two~~ three years, which records shall be available ~~at all times~~ during business reasonable hours for inspection by any member of the board or its special agents. Such records shall include the following information:

a. The amount in liters and alcoholic content of each type of alcoholic beverage manufactured during each calendar month;

b. The amount of alcoholic beverages on hand at the end of each calendar month;

c. Withdrawals of alcoholic beverages for sale to the board or licensees ~~of the board~~ ;

d. Withdrawals of alcoholic beverages for shipment outside of ~~Virginia~~ the Commonwealth showing:

(1) Name and address of consignee;

(2) Date of shipment; and

(3) Alcoholic content, brand name, type of beverage, size of container and quantity of shipment.

e. Purchases of cider or wine including:

(1) Date of purchase;

(2) Name and address of vendor;

(3) Amount of purchase in liters; and

(4) Amount of consideration paid.

f. A distiller or fruit distiller employed to distill any alcoholic beverage shall include in his records the name and address of his employer for such purpose, the amount of grain, fruit products or other substances delivered by such employer, the type, amount in liters and alcoholic content of alcoholic beverage distilled therefrom, the place where stored, and the date of the transaction.

2. Distillation for another. A distiller or fruit distiller

Proposed Regulations

manufacturing distilled spirits for another person shall:

- a. At all times during distillation keep segregated and identifiable the grain, fruit, fruit products or other substances furnished by the owner thereof;
- b. Keep the alcoholic beverages distilled for such person segregated in containers bearing the date of distillation, the name of the owner, the amount in liters, and the type and alcoholic content of each container; and
- c. Release the alcoholic beverages so distilled to the custody of the owner, or otherwise, only upon a written permit issued by the board.

3. Farm wineries. A farm winery shall keep complete, accurate and separate records of fresh fruits or other agricultural products grown or produced elsewhere and obtained for the purpose of manufacturing wine. At least 51% of the fresh fruits or agricultural products used by the farm winery to manufacture the wine shall be grown or produced on such farm.

§ 6. Wine or beer importer licenses; conditions for exercise of license privileges.

A. In addition to complying with the requirements of subdivisions 7 and 10 of § 4-25 A §§ 4.1-207 3 and 4.1-208 4 of the Code of Virginia, pertaining to beer and wine wine and beer importer licenses, holders of beer and wine wine and beer importer licenses must comply with the provisions of § 4-25 D § 4.1-218 in order to exercise the privileges of such licenses. The board shall approve such forms as are necessary to facilitate compliance with § 4-25 D § 4.1-218 . Any document executed by, or on behalf of, brand owners for the purpose of designating beer or wine wine or beer importer licensees as the authorized representative of such brand owner must be signed by a person authorized by the brand owner to do so. If such person is not an employee of the brand owner, then such document must be accompanied by a written power of attorney which provides that the person executing the document on behalf of the brand owner is the attorney-in-fact of the brand owner and has full power and authority from the brand owner to execute the required statements on its behalf. The board may approve a limited power of attorney form in order to effectuate the aforesaid provision.

B. When filing the list required by § 4-25 D § 4.1-218 of the Code of Virginia of all wholesale licensees authorized by a beer or wine wine or beer importer to distribute brands of beer or wine wine or beer in the Commonwealth, beer and wine wine and beer importer licensees shall comply with the provisions of the Beer and Wine Franchise Acts Wine and Beer Franchise Acts pertaining to designation of sales territories designations of primary areas of responsibility in the case of wholesale beer wine licensees and designations of primary areas of responsibility designation of sales territories in the case of

wholesale wine beer licensees.

C. In the event that, subsequent to the filing of the brand owner's authorization for a licensed importer to import any brand of beer or wine wine or beer , the importer makes arrangements to sell and deliver or ship additional brands of beer or wine wine or beer into this Commonwealth, the privileges of its license shall not extend to such additional brands until the licensee complies with the requirements of § 4-25 D § 4.1-218 of the Code of Virginia and the provisions of this section in relation to each such additional brand. Likewise, if the brand owner who has previously authorized a licensed importer to import one or more of its brands of beer or wine wine or beer into this Commonwealth should, subsequent thereto, withdraw from the importer its authority to import such brand, it shall be incumbent upon such importer to make a supplemental filing of its brand owner authorizing documents indicating the deletion of any such brand(s) of beer or wine wine or beer .

D. The foregoing provisions of this regulation shall not impair contracts in existence or entered into prior to the July 1, 1991, effective date of the amendments to §§ 4-25, 4-118.4 and 4-118.43 of the Code of Virginia, between the licensed importer and its supplier or brand owner.

§ 7. Beer and beverage excise taxes Excise taxes; beer and wine coolers .

A. Indemnifying bond required of beer manufacturers, bottlers or wholesalers of beer and wine coolers .

1. No license shall be issued to a manufacturer, bottler or wholesaler of beer or beverages as defined in § 4-127 of the Code of Virginia or wine coolers unless there shall be on file with the board, on a form approved or authorized by the board, an indemnifying bond running to the Commonwealth of Virginia in the penalty of not less than \$1,000 or more than \$100,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth of Virginia as surety, conditioned upon the payment of the tax imposed by Chapter 4 (§ 4-127 et seq.) of Title 4 § 4.1-236 of the Code of Virginia and in accordance with the provisions thereof and § 4.1-239 .

2. A manufacturer, bottler or wholesaler of beer or beverages wine coolers may request in writing a waiver of the surety and the bond by the board. The board may withdraw such waiver at any time for failure to comply with the provisions of §§ 4-128, 4-129 and 4-131 §§ 4.1-236 and 4.1-239 of the Code of Virginia.

B. Shipment of beer and beverages wine coolers to installations of the armed forces.

1. Installations of the United States Armed Forces shall include, but not be limited to, all United States,

Proposed Regulations

Army, Navy, Air Force, Marine, Coast Guard, Department of Defense and Veteran Administration bases, forts, reservations, depots, or other facilities.

2. The direct shipment of beer and ~~beverages~~ *wine coolers* from points outside the geographical confines of the Commonwealth to installations of the United States Armed Forces located within the geographical confines of the Commonwealth for resale on such installations shall be prohibited. Beer and ~~beverages~~ *wine coolers* must be shipped to duly licensed Virginia wholesalers who may deliver the same to such installations, but the sale of such beer and ~~beverages~~ *wine coolers* so delivered shall be exempt from the beer and beverage excise tax as provided by Chapter 4 of Title 4 of the Code of Virginia on beer and wine coolers only if the sale thereof meets the exemption requirements of § 4-130 4.1-236 .

C. Filing of monthly report and payment of tax falling due on Saturday, Sunday or legal holiday; filing or payment by mail.

1. When the last day on which a monthly report may be filed or a tax may be paid without penalty or interest falls on a Saturday, Sunday or legal holiday, then any report required by Chapter 4 of Title 4 § 4.1-239 of the Code of Virginia may be filed or such payment may be made without penalty or interest on the next succeeding business day.

2. When remittance of a monthly report or a tax payment is made by mail, receipt of such report or payment by the person with whom such report is required to be filed or to whom such payment is required to be made, in a sealed envelope bearing a postmark on or before midnight of the day such report is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such report had been filed or such payment made before the close of business on the last day on which such report may be filed or such tax may be paid without penalty or interest.

D. Rate of interest.

Unless otherwise specifically provided, interest on omitted taxes and refunds under Chapter 4 of Title 4 the excise tax provisions of Title 4.1 of the Code of Virginia shall be computed in the same manner specified in § 58.1-15 of the Code of Virginia ; as amended .

§ 8. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of ~~distilled~~ spirits.

A. Generally.

This regulation applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale ~~distilled~~ spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the

board and in the manner authorized by this regulation shall be prohibited.

B. Permits.

1. No person shall solicit a mixed beverage licensee unless he has been issued a permit by the board . To obtain a permit, a person shall:

a. Register with the board by filing an application on such forms as prescribed by the board;

b. Pay in advance a fee of \$300, which is subject to proration on a quarterly basis, pursuant to the provisions of § 4-98.16 D § 4.1-230 E of the Code of Virginia;

c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each specific brand or brands of ~~distilled~~ spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and

d. Be an individual at least 21 years of age.

2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the board.

3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of ~~distilled~~ spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or its duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board for a particular brand or brands of ~~distilled~~ spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of authorization on file with the board shall be effective as against the board until written notice thereof is received and filed with the board; and, until the board receives notice thereof, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands specified on the most current authorization on file with the board.

C. Records.

A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of ~~two~~ three years, reflecting all expenses incurred by him in connection with the solicitation of the sale of

Proposed Regulations

his employer's products and shall, upon request, furnish the board with a copy of such records.

D. Permitted activities.

Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:

1. Distribute directly or indirectly written educational material (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing distilled spirits advertising not in excess of \$5.00 in wholesale value (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; and provide film or video presentations of distilled spirits which are essentially educational to licensees and their employees only, and not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from packages containers of distilled spirits and furnish one, unopened, 50 milliliter sample container of each brand being promoted by the permittee and not sold by the licensee; such packages containers and sample containers shall be purchased at a Virginia ABC government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the package or container or sample container label; further, the distilled spirits package container shall remain the property of the permittee and may not be left with the licensee and any 50 milliliter sample containers left with the licensee shall not be sold by the licensee;

3. Promote their authorized brands of distilled spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or distilled spirits representatives for the benefit of their members and guests, and shall be limited as follows:

- a. To sample servings from packages containers of distilled spirits purchased from Virginia ABC government stores when the distilled spirits donated are intended for consumption during the gathering;

- b. To displays of distilled spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this regulation;

- c. To distribution of informational brochures, pamphlets and the like, relating to distilled spirits;

- d. To distribution of novelty and specialty items

bearing distilled spirits advertising not in excess of \$5.00 in wholesale value; and

- e. To film or video presentations of distilled spirits which are essentially educational;

4. Provide or offer to provide point-of-sale advertising material to licensees as provided in § 2 of VR 125-01-2.

E. Prohibited activities.

A permittee shall not:

1. Sell distilled spirits to any licensee of the board, solicit or receive orders for distilled spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or to negotiate any contract or contract terms for the sale of distilled spirits with a licensee;

2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell distilled spirits to licensees;

3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3;

4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;

5. Purchase or deliver distilled spirits or other alcoholic beverages for or to licensees or provide any services as inducements to licensees, except that this provision shall not preclude the sale or delivery of wine, or beer or beverages by a licensed wholesaler;

6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail licensee;

7. Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3;

8. Solicit or promote any brand or brands of distilled spirits without having on file with the board a letter from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth; or

9. Engage in solicitation of distilled spirits other than as authorized by law.

F. Refusal, suspension or revocation of permits.

Proposed Regulations

1. The board may refuse, suspend or revoke a permit if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

2. Before refusing, suspending or revoking such permit, the board shall follow the same administrative procedures accorded an applicant or licensee under the ~~Alcoholic Beverage Control Act~~ *Title 4.1 of the Code of Virginia* and regulations of the board.

§ 9. Sunday deliveries by wholesalers prohibited; exceptions.

Persons licensed by the board to sell alcoholic beverages at wholesale shall make no delivery to retail purchasers on Sunday, except to ships boats sailing for a port of call outside of the Commonwealth, or to banquet licensees.

VA.R. Doc. No. R94-38; Filed September 24, 1993, 11:42 a.m.

* * * * *

Title of Regulation: VR 125-01-7. Other Provisions.

Statutory Authority: §§ 4.1-103 12 and 17, 4.1-111 A and B 4, and 4.1-204 of the Code of Virginia.

Public Hearing Date: December 20, 1993 - 10 a.m.

Written comments may be submitted through December 17, 1993.

(See Calendar of Events section for additional information)

Basis: §§ 4.1-103 12 and 17, 4.1-111 A and B 4, and 4.1-204 of the Code of Virginia. Authority of the board to promulgate regulations generally; the statutory mandate that the board promulgate regulations which establish requirements for the form, content, and retention of all records and accounts by all licensees, including the reporting and collection of taxes required by § 4.1-236 of the Code of Virginia; and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia.

Purpose: To amend §§ 1 through 18 generally so as to conform to the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and other technical changes as they relate to recodification; to make changes in style or form to §§ 1, 4, 9, 10, 12, 15, 16, 17 and 18; to make the records retention period consistent with proposed amendments to VR 125-01-7 § 9; to clarify when and under what circumstances special agents shall have access to places where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold for the purpose of examining and inspecting all records, invoices and

accounts; to define "reasonable hours"; to establish requirements for the form, content and retention of all records and accounts of all licensees; to clarify the treatment of wine coolers and who may manufacture, bottle or sell such merchandise; and to comply with 1993 statutory amendments.

Substance:

1. Update the sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all reference to the term "beverages."

2. Amend §§ 4, 6 and 12 to increase from two years to three years the retention period for records required of culinary permittees, hospitals, industrial and manufacturing permittees and out-of-bond warehouses, and to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours."

3. Amend § 9 to increase from two years to three years the retention period for records required of all licensees and to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours."

4. Amend § 9 to clarify that special agents shall be given free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold for the purpose of examining and inspecting all records, invoices and accounts.

5. Amend § 9 to define "reasonable hours" to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

6. Amend § 9 (i) to require all licensed manufacturers, bottlers or wholesalers of alcoholic beverages to keep a complete, accurate and separate record of all alcoholic beverages manufactured, bottled, purchased, sold or shipped by them, and to require that such records shall show the quantities of all such alcoholic beverages manufactured, bottled, purchased, sold or shipped; the dates of all sales, purchases, deliveries or shipments; the names and addresses of all persons to or from whom such sales, purchases, deliveries, or shipments are made; the quantities and kinds of alcoholic beverages sold and delivered or shipped and the prices charged therefor and the taxes applicable thereto, if any. Additionally, require every manufacturer and wholesaler at the time of delivering alcoholic beverages to any person to prepare a duplicate invoice showing the date of delivery, the quantity and value of each delivery, and the name of the purchaser to whom the delivery is made; and (ii) to require every retail licensee to keep complete, accurate and separate records, including

invoices, of the purchases and sales of alcoholic beverages, food and other merchandise; require records of alcoholic beverages to be kept separate and apart from other records and to include all purchases thereof, the dates of such purchases, the kinds and quantities of alcoholic beverages purchased, the prices charged therefor and the names and addresses of the persons from whom purchased. Additionally, require each retail licensee to keep accurate accounts of daily sales, showing quantities of alcoholic beverages, food, and other merchandise sold and the prices charged therefor.

7. Amend § 14 to clarify that wine coolers, as defined in § 4.1-100 of the Code of Virginia, shall be treated as wine, except for purposes of taxation and shipments from points outside the Commonwealth to installations of the United States armed forces located within the Commonwealth, and to provide that any person licensed to manufacture, bottle or sell wine need not pay any additional state tax for any license to manufacture, bottle or sell, as the case may be, any wine cooler.

8. To adopt § 19 to allow the board to waive the banquet license tax for duly organized not-for-profit corporations or associations holding a nonprofit event.

9. To adopt § 20 to allow the board to issue yearly permits authorizing permittees to purchase grain alcohol for industrial, commercial or medical use.

Issues:

1. To comply with the 1993 recodification of Title 4 into new Title 4.1, including the repeal of the 3.2 beverage laws (Chapter 2, § 4-99 et seq.), and changes merely technical in nature.
2. To attain consistency and uniformity in all record keeping requirements.
3. To require licensees to retain records of purchases/sales for three years which should not be disadvantageous or burdensome to licensees because they are required to retain their records for the same time period for state income tax purposes.
4. To clarify when and under what circumstances special agents shall have access to places where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold for the purpose of examining and inspecting all records, invoices and accounts.
5. Incorporation and clarification of current practice and board policy.
6. To comply specifically with §§ 4.1-111 B 4 and 4.1-204 of the Code of Virginia.
7. To comply with 1993 statutory amendments to §§

4.1-111 and 4.1-119 of the Code of Virginia.

Impact:

1. All ABC licensees (approximately 13,532 as of 8/1/93) located within and outside the Commonwealth will be affected by recodification, record keeping changes and special agents' access during reasonable hours to their retail establishments. Not-for-profit corporations or associations applying for banquet licenses for nonprofit events (number unknown) may ask the board to waive the banquet license tax. It is difficult to estimate the number of people who will apply for grain alcohol permits since the statutory prohibition on the sale of grain alcohol only became effective July 1, 1993; however, 88 grain alcohol permits have been issued as of August 15, 1993.

2. The cost to the agency of waiving banquet license taxes is difficult to estimate because it is not known how many applicants will be eligible for the waiver nor how many applicants will request the waiver. There will be a loss of revenue. The cost associated with issuing yearly grain alcohol permits will be approximately \$2,900 annually. There will not be any additional costs associated with the agency's implementation of the other amendments to VR 125-01-7.

3. The cost of compliance for keeping records for an additional year is difficult to estimate because licensees and permittees will incur different storage costs. There will not be any additional compliance costs associated with the other amendments to VR 125-01-7.

Summary:

The proposed amendments:

1. Update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages."
2. Amend §§ 4, 6 and 12 to increase from two years to three years the retention period for records required of culinary permittees, hospitals, industrial and manufacturing permittees and out-of-bond warehouses, and to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours."
3. Amend § 9 to increase from two years to three years the retention period for records required of all licensees and to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours."
4. Amend § 9 to clarify that special agents shall be given free access during reasonable hours to every

Proposed Regulations

place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold for the purpose of examining and inspecting all records, invoices and accounts.

5. Amend § 9 to define "reasonable hours" to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

6. Amend § 9 to require all licensed manufacturers, bottlers or wholesalers of alcoholic beverages to keep a complete, accurate and separate record of all alcoholic beverages manufactured, bottled, purchased, sold or shipped by them, and to require that such records shall show the quantities of all such alcoholic beverages manufactured, bottled, purchased, sold or shipped; the dates of all sales, purchases, deliveries or shipments; the names and addresses of all persons to or from whom such sales, purchases, deliveries, or shipments are made; the quantities and kinds of alcoholic beverages sold and delivered or shipped and the prices charged therefor and the taxes applicable thereto, if any. Additionally, § 9 is amended to require every manufacturer and wholesaler at the time of delivering alcoholic beverages to any person to prepare a duplicate invoice showing the date of delivery, the quantity and value of each delivery, and the name of the purchaser to whom the delivery is made. Further amendments to § 9 require every retail licensee to keep complete, accurate and separate records, including invoices, of the purchases and sales of alcoholic beverages, food and other merchandise; and require records of alcoholic beverages to be kept separate and apart from other records and to include all purchases thereof, the dates of such purchases, the kinds and quantities of alcoholic beverages purchased, the prices charged therefor and the names and addresses of the persons from whom purchased. Additionally, each retail licensee is required to keep accurate accounts of daily sales, showing quantities of alcoholic beverages, food, and other merchandise sold and the prices charged therefor.

7. Amend § 14 to clarify that wine coolers, as defined in § 4.1-100 of the Code of Virginia, shall be treated as wine, except for purposes of taxation and shipments from points outside the Commonwealth to installations of the United States armed forces located within the Commonwealth, and to provide that any person licensed to manufacture, bottle or sell wine need not pay any additional state tax for any license to manufacture, bottle or sell, as the case may be, any wine cooler.

8. Add § 19 to allow the board to waive the banquet license tax for duly organized not-for-profit corporations or associations holding a nonprofit event.

9. Add § 20 to allow the board to issue yearly permits authorizing permittees to purchase grain alcohol for

industrial, commercial or medical use.

VR 125-01-7. Other Provisions.

§ 1. Transportation of alcoholic beverages and beverages ; noncommercial permits; commercial carrier permits; refusal, suspension or revocation of permits; exceptions; out-of-state limitation not affected.

A. Permits generally.

The transportation within or through this Commonwealth of alcoholic beverages or beverages lawfully purchased within this Commonwealth is prohibited, except upon a permit issued by the board, when in excess of the following limits:

1. Wine and beer. No limitation.

2. Alcoholic beverages other than those described in subdivision A 1. Three gallons; provided, however, that not more than one gallon thereof shall be in packages containers containing less than 1/5 of a gallon.

3. Beverages. No limitation.

If any part of the alcoholic beverages being transported is contained in a metric-sized package container , the three-gallon limitation shall be construed to be 12 liters, and not more than four liters shall be in packages containers smaller than 750 milliliters.

The transportation within, into or through this Commonwealth of alcoholic beverages or beverages lawfully purchased outside of this Commonwealth is prohibited, except upon a permit issued by the board, when in excess of the following limits:

1. Alcoholic beverages, including wine and beer. One gallon (four liters if any part is in a metric-sized package container).

2. Beverages. One case of not more than 384 ounces (12 liters if in metric-sized packages).

If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit, which shall accompany the alcoholic beverages or beverages at all times to the final destination.

B. Commercial carrier permits.

Commercial carriers desiring to engage regularly in the transportation of alcoholic beverages or beverages within, into or through this Commonwealth shall, except as hereinafter noted, file application in writing for a transportation permit upon forms furnished by the board. If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit. Such permit shall not be transferable and shall authorize the carrier to engage in the regular transportation of alcoholic

Proposed Regulations

beverages ~~or beverages~~ upon condition that there shall accompany each such transporting vehicle:

1. A bill of lading or other memorandum describing the alcoholic beverages ~~or beverages~~ being transported, and showing the names and addresses of the consignor and consignee, who shall be lawfully entitled to make and to receive the shipment; and

2. Except for express companies and carriers by rail or air, a certified photocopy of the carrier's transportation permit.

C. Refusal, suspension or revocation of permits.

The board may refuse, suspend or revoke a carrier's transportation permit if it shall have reasonable cause to believe that alcoholic beverages ~~or beverages~~ have been illegally transported by such carrier or that such carrier has violated any condition of a permit. Before refusing, suspending or revoking such permit, the board shall accord the carrier involved the same notice, opportunity to be heard, and follow the same administrative procedures accorded an applicant or licensee under the ~~Alcoholic Beverage Control Act Title 4.1 of the Code of Virginia~~.

D. Exceptions.

There shall be exempt from the requirements of this section:

1. Common carriers by water engaged in transporting lawfully acquired alcoholic beverages for a lawful consignor to a lawful consignee;

2. Persons transporting wine, beer, or cider ~~or beverages~~ purchased from the board or a licensee of the board ;

3. Persons transporting alcoholic beverages ~~or beverages~~ which may be manufactured and sold without a license ~~from the board~~ ;

4. A licensee of the board transporting lawfully acquired alcoholic beverages ~~or beverages~~ he is authorized to sell in a vehicle owned or leased by the licensee;

5. Persons transporting alcoholic beverages ~~or beverages~~ to the board, or to licensees of the board , provided that a bill of lading or a complete and accurate memorandum accompanies the shipment, and provided further, in the case of the licensee, that the merchandise is such as his license entitles him to sell;

6. Persons transporting alcoholic beverages ~~or beverages~~ as a part of their official duties as federal, state or municipal officers or employees; and

7. Persons transporting lawfully acquired alcoholic beverages ~~or beverages~~ in a passenger vehicle, other

than those alcoholic beverages ~~or beverages~~ referred to in subdivisions D 2 and D 3, provided the same are in the possession of the bona fide owners thereof, and that no occupant of the vehicle possesses any alcoholic beverages in excess of the maximum limitations set forth in subsection A.

E. One-gallon (four liters if any part in a metric-sized ~~package container~~) limitation.

This regulation shall not be construed to alter the one-gallon (four liters if any part is in a metric-sized ~~package container~~) limitation upon alcoholic beverages which may be brought into the Commonwealth pursuant to § ~~4-84(d)~~ 4.1-310 E of the Code of Virginia.

§ 2. Procedures for handling cider; authorized licensees; containers; labels; markup; age limits.

A. Procedures for handling cider.

The procedures established by regulations of the board for the handling of wine having an alcoholic content of not more than 14% by volume shall, with the necessary change of detail, be applicable to the handling of cider, subject to the following exceptions and modifications.

B. Authorized licensees.

Licensees authorized to sell beer and wine, or either, at retail are hereby approved by the board for the sale of cider and such sales shall be made only in accordance with the age limits set forth below.

C. Containers.

Containers of cider shall have a capacity of not less than 12 ounces (375 milliliters if in a metric-sized ~~package container~~) nor more than one gallon (three liters if in a metric-sized ~~package container~~).

D. Labels.

If the label of the product is subject to approval by the federal government, a copy of the federal label approval shall be provided to the board.

E. Markup.

The markup or profit charged by the board shall be \$.08 per liter or fractional part thereof.

F. Age limits.

Persons must be 21 years of age or older to purchase or possess cider.

§ 3. Sacramental wine; purchase orders; permits; applications for permits; use of sacramental wine.

A. Purchase orders.

Proposed Regulations

Purchase orders for sacramental wine shall be on separate order forms prescribed by the board and provided at cost if supplied by the board.

B. Permits.

Sales for sacramental purposes shall be only upon permits issued by the board without cost and on which the name of the wholesaler authorized to make the sale is designated.

C. Applications for permits.

Requests for permits by a religious congregation shall be in writing, executed by an officer of the congregation, and shall designate the quantity of wine and the name of the wholesaler from whom the wine shall be purchased.

D. Use of sacramental wine.

Wine purchased for sacramental purposes by a religious congregation shall not be used for any other purpose.

§ 4. Alcoholic beverages for culinary purposes; permits; purchases; restrictions.

A. Permits.

The board may issue a culinary permit to a person operating an establishment where food is prepared on the premises. The board may refuse to issue or may suspend or revoke such a permit for any reason that it may refuse to issue, suspend or revoke a license.

B. Purchases.

~~Distilled spirits~~ *Spirits* shall be purchased from ~~ABC retail government stores~~. Wine and beer may be purchased from retail licensees when the permittee does not hold any retail on- or off-premises licenses. A permittee possessing a retail on- or off-premises license must purchase its wine and beer from a ~~wholesaler~~ *wholesale licensees*. However, a permittee who only has an on- or on- and off-premises beer license may purchase its wine from a retail licensee.

C. Records.

Permittees shall keep complete and accurate records of their purchases of alcoholic beverages ~~and beverages~~ at the permittee's place of business for ~~two~~ *three* years. The records shall be available for inspection and copying by any member of the board or its *special* agents ~~at any time~~ during ~~business~~ *reasonable* hours.

D. Restrictions.

Alcoholic beverages purchased for culinary purposes shall not be sold or used for any other purpose. They shall be stored at the permittee's place of business, separate and apart from all other commodities.

§ 5. Procedures for druggists and wholesale druggists; purchase orders; records: *(Repealed.)*

A. Purchase orders.

Purchases of alcohol by druggists or wholesale druggists shall be executed only on orders on forms supplied by the board. In each case the instructions on the forms relative to purchase and transportation shall be complied with.

B. Records.

Complete and accurate records shall be kept at the place of business of each druggist and wholesale druggist for a period of two years, which records shall be available at all times during business hours for inspection by any member of the board or its agents. Such records shall show:

1. The amount of alcohol purchased;
2. The date of receipt; and
3. The name of the vendor.

In addition, records of wholesale druggists shall show:

1. The date of each sale;
2. The name and address of the purchaser; and
3. The amount of alcohol sold.

§ 6. Alcoholic beverages for hospitals, industrial and manufacturing users.

A. Permits.

The board may issue a yearly permit authorizing the shipment and transportation direct to the permittee of orders placed by the board for alcohol or other alcoholic beverages for any of the following purposes:

1. For industrial purposes;
2. For scientific research or analysis;
3. For manufacturing articles allowed to be manufactured under the provisions of § 4-48 4.1-200 of the Code of Virginia; or
4. For use in a hospital or home for the aged (alcohol only).

Upon receipt of alcohol or other alcoholic beverages, one copy of the bill of lading or shipping invoice, accurately reflecting the date received and complete and accurate records of the transaction, shall be forwarded to the board by the permittee.

The application for such permits shall be on forms

provided by the board.

B. Permit fees.

Applications for alcohol shall be accompanied by a fee of \$10, where the order is in excess of 110 gallons during a calendar year, or a fee of \$5.00 for lesser amounts. Applications for other alcoholic beverages shall be accompanied by a fee of 5.0% of the delivered cost to the place designated by the permittee. No fee shall be charged agencies of the United States or of the Commonwealth of Virginia or eleemosynary institutions.

C. Storage.

A person obtaining a permit under this section shall:

1. Store such alcohol or alcoholic beverages in a secure place upon the premises designated in the application separate and apart from any other articles kept on such premises;
2. Maintain accurate records of receipts and withdrawals of alcohol and alcoholic beverages at the permittee's place of business for a period of ~~two~~ three years; and
3. Furnish to the board within 10 days after the end of the calendar year for which he was designated a permittee, a statement setting forth the amount of alcohol or alcoholic beverages on hand at the beginning of the previous calendar year, the amount purchased during the year, the amount withdrawn during the year, and the amount on hand at the end of the year.

D. Refusal of permit.

The board may refuse to designate a person as a permittee if it shall have reasonable cause to believe either that the alcohol or alcoholic beverages would be used for an unlawful purpose, or that any cause exists under ~~§ 4-31~~ § 4.1-222 of the Code of Virginia for which the board might refuse to grant the applicant any license.

E. Suspension or revocation of permit.

The board may suspend or revoke the designation as a permittee if it shall have reasonable cause to believe that the permittee has used or allowed to be used any alcohol or alcoholic beverages obtained under the provisions of this section for any purpose other than those permitted under the Code of Virginia, or has done any other act for which the board might suspend or revoke a license under ~~§ 4-37~~ 4.1-225 of the Code of Virginia.

F. Access to storage and records.

The board and its *special* agents shall have free access during ~~business reasonable~~ hours to all places of storage and records required to be kept pursuant to this section

for the purpose of inspection and examining such place and such records.

§ 7. Permits for persons having alcoholic beverages distilled.

A. Permits.

Any person who contracts with or engages a licensed distiller or fruit distiller to manufacture ~~distilled~~ spirits from grain fruit, fruit products or other substances grown or lawfully produced by such person shall obtain a board permit before withdrawing the ~~distilled~~ spirits from the distillery's premises. The permit shall accompany the shipment at all times. The application for the permit shall include the following:

1. The name, address and license number (if any) of the consignee;
2. The kind and quantity in gallons of alcoholic beverages; and
3. The name of the company employed to transport the shipment.

B. Limitations on permits.

Permits shall be issued only for (i) ~~distilled~~ spirits shipments to the board, (ii) sales and shipments to a lawful consignee outside the Commonwealth under a bona fide written contract, or (iii) shipments of ~~distilled~~ spirits samples to the person growing or producing the substance distilled. Samples shall be packaged in containers of 375 or 750 milliliters and the words "Sample-Not for Sale" shall be printed in letters of reasonable size on the label.

§ 8. ~~Manufacture, sale, etc., of "sterno," and similar substances for fuel purposes. (Repealed.)~~

~~No license from the board is required for the manufacture, sale, delivery and shipment of "Sterno," canned heat and similar substances intended for fuel purposes only.~~

§ 9. Records to be kept by licensees generally; additional requirements for certain retailers; "sale" and "sell" defined; gross receipts; reports.

A. Generally.

All licensees of the board shall keep complete ~~and~~, accurate *and separate* records at the licensee's place of business for a period of ~~two~~ three years. The records shall be available for inspection and copying by any member of the board or its *special* agents at ~~any time~~ during *business reasonable* hours. Licensees of the board may use microfilm, microfiche, disks or other available technologies for the storage of their records, provided the records so stored are readily subject to retrieval and made available for viewing on a screen or in hard copy by the board or

Proposed Regulations

its special agents.

The board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting all records, invoices and accounts therein.

"Reasonable hours" shall be deemed to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

B. Retail licensees.

Retail licensees shall keep complete and accurate records, including invoices, of the purchases and sales of alcoholic beverages, and beverages, food and other merchandise. The records of alcoholic beverages and beverages shall be kept separate from other records.

B. Licensed manufacturers, bottlers and wholesalers.

All licensed manufacturers, bottlers or wholesalers of alcoholic beverages shall keep a complete, accurate and separate record of all alcoholic beverages manufactured, bottled, purchased, sold or shipped by him. Such records shall show the quantities of all such alcoholic beverages manufactured, bottled, purchased, sold or shipped by him; the dates of all sales, purchases, deliveries or shipments; the names and addresses of all persons to or from whom such sales, purchases, deliveries or shipments are made; the quantities and kinds of alcoholic beverages sold and delivered or shipped and the prices charged therefor and the taxes applicable thereto, if any. Every manufacturer and wholesaler, at the time of delivering alcoholic beverages to any person, shall also prepare a duplicate invoice showing the date of delivery, the quantity and value of each delivery and the name of the purchaser to whom the delivery is made.

C. Retail licensees.

Every retail licensee shall keep complete, accurate and separate records, including invoices, of the purchases and sales of alcoholic beverages, food and other merchandise. The records of alcoholic beverages shall be kept separate and apart from other records and shall include all purchases thereof, the dates of such purchases, the kinds and quantities of alcoholic beverages purchased, the prices charged therefor and the names and addresses of the persons from whom purchased.

Additionally, each retail licensee shall keep accurate accounts of daily sales, showing quantities of alcoholic beverages, food, and other merchandising sold and the prices charged therefor.

E. D. Mixed beverage restaurant licensees.

In addition to the requirements of subsections A and B above C, mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales. The following actions shall also be taken:

1. On delivery of a mixed beverage restaurant license by the board, the licensee shall furnish to the board or its special agents a complete and accurate inventory of all alcoholic beverages and beverages currently held in inventory on the premises by the licensee; and

2. Once a year, each licensee shall submit on prescribed forms to the board an annual review report. The report is due within 30 days after the end of the mixed beverage license year and shall include:

a. A complete and accurate inventory of all alcoholic beverages and beverages purchased for sale as mixed beverages and held in inventory at the close of business at the end of the annual review period;

b. An accounting of the annual purchases of food, nonalcoholic beverages; and alcoholic beverages, and beverages, including alcoholic beverages purchased for sale as mixed beverages, and miscellaneous items; and

c. An accounting of the monthly and annual sales of all merchandise specified in subdivision E D 2 b.

D. E. "Sale" and "sell."

The terms "sale" and "sell" shall include exchange, barter and or traffic, and or delivery made otherwise than gratuitously, by any means whatsoever, of mixed beverages; and other alcoholic beverages and beverages, and of meals or food.

E. F. Gross receipts; food, hors d'oeuvres, alcoholic beverages, etc.

In determining "gross receipts from the sale of food" for the purposes of Chapter 1-1 (§ 4-98.1 et seq.) of Title 4 § 4.1-210 of the Code of Virginia, a licensee shall not include any receipts for food for which there was no sale, as defined in this section. Food which is available at an unwritten, non-separate charge to patrons or employees during Happy Hours, private social gatherings, promotional events, or at any other time, shall not be included in the gross receipts. Food shall include hors d'oeuvres.

If in conducting its review pursuant to § 4-98.7 4.1-114 of the Code of Virginia, the board determines that the licensee has failed or refused to keep complete and accurate records of the amounts of mixed beverages; or other alcoholic beverages or beverages sold at regular prices, as well as at all various reduced and increased prices offered by the licensee, the board may calculate

Proposed Regulations

the number of mixed drinks ; *and other* alcoholic beverage ~~and beverage~~ drinks sold, as determined from purchase records, and presume that such sales were made at the highest posted menu prices for such merchandise.

F. G. Reports.

Any changes in the officers, directors or shareholders owning 10% or more of the outstanding capital stock of a corporation shall be reported to the board within 30 days; provided, however, that corporations or their wholly owned subsidiaries whose corporate common stock is publicly traded and owned shall not be required to report changes in shareholders owning 10% or more of the outstanding capital stock.

§ 10. Gifts of alcoholic beverages ~~or beverages~~ generally; exceptions; wine *and beer* tastings; taxes and records.

A. Generally.

Gifts of alcoholic beverages ~~or beverages~~ by a licensee to any other person are prohibited except as otherwise provided in this section.

B. Exceptions.

Gifts of alcoholic beverages ~~or beverages~~ may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.

2. Samples. A wholesaler may give a retail licensee a sample serving or a ~~package~~ *container* not then sold by such licensee of wine ; *or beer or beverages* , which such wholesaler otherwise may sell to such retail licensee, provided that in a case of ~~packages~~ *containers* the ~~package~~ *container* does not exceed 52 fluid ounces in size (1.5 liter if in a metric-sized ~~package~~ *container*) and the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample ~~package~~ *container* .

3. Hospitality rooms; conventions. A person licensed by ~~the board~~ to manufacture wine ; *or beer or beverages* may:

a. Give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and

b. Host an event at conventions of national, regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or

national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

4. Conventions; educational programs, including wine *and beer* tastings; research; licensee associations. Licensed manufacturers, bottlers and wholesalers may donate beer ; ~~beverages~~ or wines to:

a. A convention, trade association or similar gathering, composed of licensees ~~of the board~~, and their guests, when the alcoholic beverages ~~or beverages~~ donated are intended for consumption during the convention;

b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages ~~or beverages~~ being given away;

c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism;

d. Licensed manufacturers and wholesalers may donate wine to official associations of wholesale wine licensees ~~of the board~~ when conducting a bona fide educational program concerning wine, with no promotion of a particular brand, for members and guests of particular groups, associations or organizations.

5. Conditions. Exceptions authorized by subdivisions B 3 b and B 4 are conditioned upon the following:

a. That prior written notice of the activity be submitted to the board describing it and giving the date, time and place of such; and

b. That the activity be conducted in a room or rooms set aside for that purpose and be adequately supervised.

C. Wine *and beer* tastings.

Wine *and beer* wholesalers may participate in a wine or beer tasting sponsored by a ~~wine specialty gourmet~~ shop licensee for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine *or beer* .

D. Taxes and records.

Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4 4.1 of the Code of Virginia, and complete and accurate records shall be maintained.

§ 11. Release of alcoholic beverages from customs and ~~internal revenue~~ bonded warehouses; receipts; violations;

Proposed Regulations

limitation upon sales.

A. Release generally.

Alcoholic beverages held in a United States customs bonded warehouse may be released therefrom for delivery to:

1. The board;
2. A person holding a license authorizing the sale of the alcoholic beverages at wholesale;
3. *Ships Boats* actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or trade between the United States and any of its possessions outside of the several states and the District of Columbia; or
4. Persons for shipment outside ~~this the~~ Commonwealth to someone legally entitled to receive the same under the laws of the state of destination.

Releases to any other person shall be under a permit issued by the board and in accordance with the instructions therein set forth.

B. Receipts.

A copy of the permit, if required, shall accompany the alcoholic beverages until delivery to the consignee. The consignee, or his duly authorized representative, shall acknowledge receipt of delivery upon a copy of the permit, which receipted copy shall be returned to the board by the permittee within 10 days after delivery.

C. Violations.

The board may refuse to issue additional permits to a permittee who has previously violated any provision of this section.

D. Limitation upon sales.

A maximum of six imperial gallons of alcoholic beverages may be sold, released and delivered in any 30-day period to any member of foreign armed forces personnel.

§ 12. Approval of warehouses for storage of alcoholic beverages not under customs or internal revenue bond; segregation of merchandise; release from storage; records; exception.

A. Certificate of approval.

Upon the application of a person qualified under the provisions of § ~~4-84.1~~ 4.1-130 of the Code of Virginia, the board may issue a certificate of approval for the operation of a warehouse for the storage of lawfully acquired alcoholic beverages not under customs bond or internal

revenue bond, if satisfied that the warehouse is physically secure.

B. Segregation.

The alcoholic beverages of each owner shall be kept separate and apart from merchandise of any other person.

C. Release from storage.

Alcoholic beverages shall be released for delivery to persons lawfully entitled to receive the same only upon permit issued by the board, and in accordance with the instructions therein set forth. The owner of the alcoholic beverages, or the owner or operator of the approved warehouse as agent of such owner, may apply for release permits, for which a charge may be made by the board.

D. Records.

Complete and accurate records shall be kept at the warehouse for a period of ~~two~~ three years, which records shall be available at all times during business reasonable hours for inspection by a member of the board or its special agents. Such records shall include the following information as to both receipts and withdrawals:

1. Name and address of owner or consignee;
2. Date of receipt or withdrawal, as the case may be; and
3. Type and quantity of alcoholic beverage.

E. Exceptions.

Alcoholic beverages stored by licensees pursuant to VR 125-01-5, § 9 are excepted from the operation of this regulation.

§ 13. Special mixed beverage licenses; locations; special privileges; taxes on licenses.

A. Location.

Special mixed beverage licenses may be granted to persons by the board at places primarily engaged in the sale of meals where the place to be occupied is owned by the government of the United States, or any agency thereof, is located on land used as a port of entry or egress to and from the United States, and otherwise complies with the requirements of § 7.1-21.1 of the Code of Virginia, which licenses shall convey all of the privileges and be subject to all of the requirements and regulations pertaining to mixed beverage restaurant licensees, except as otherwise altered or modified herein.

B. Special privileges.

"Meals" need not be "full meals," but shall at least constitute "light lunches," and the gross receipts from the

Proposed Regulations

sale of food and nonalcoholic beverages at such establishment shall be not less than 45% of the gross receipts from the sale of mixed beverages and food.

C. Taxes on licenses.

The annual tax on a special mixed beverage license shall be \$500 and shall not be prorated; provided, however, that if application is made for a license of shorter duration, the tax thereon shall be \$25 per day.

§ 14. Definitions and requirements for beverage wine licenses ; wine; wine coolers .

A. Definition.

Wherever the term "beverages" appears in these regulations, it shall mean beverages as defined in § 4-99 of the Code of Virginia. Section 4-99 defines beverages as beer, wine, similar fermented malt, and fruit juice, containing 0.5% or more of alcohol by volume, and not more than 3.2% of alcohol by weight.

B. Beverage licenses may be issued to carriers, and to applicants for retailers' licenses pursuant to § 4-102 of the Code of Virginia for either on-premises, off-premises, or on-and-off premises consumption, as the case may be, to persons meeting the qualifications of a licensee having like privileges with respect to the sale of beer. The license of a person meeting only the qualifications for an off-premises beer license shall contain a restriction prohibiting the consumption of beverages on premises.

Wherever the term "wine" appears in these regulations, it shall include "wine coolers" as defined in § 4.1-100 of the Code of Virginia. Wine coolers shall be treated as wine for the purposes of the regulations, except for purposes of taxation and shipments from points outside the Commonwealth to installations of the United States armed forces located within the Commonwealth for resale on such installations, in accordance with §§ 4.1-112 and 4.1-236 of the Code of Virginia and VR 125-01-6 § 7.

Any person licensed to manufacture, bottle or sell wine shall not be required to pay any additional state tax for any license to manufacture, bottle or sell, as the case may be, any wine cooler. Such person shall have the privilege to manufacture, bottle or sell any wine cooler under the provisions of Title 4.1 of the Code of Virginia as long as his license remains in full force and effect.

§ 15. Wholesale alcoholic beverage and beverage sales; winery and brewery discounts, price-fixing; price increases; price discrimination; inducements.

A. Discounts, price-fixing.

No winery as defined in § 4-118.43 4.1-401 or brewery as defined in § 4-118.4 4.1-500 of the Code of Virginia shall require a person holding a wholesale licensee license to discount the price at which the wholesaler shall sell any

alcoholic beverage or beverage to persons holding licenses authorizing sale of such merchandise at retail. No winery, brewery, bottler or wine or beer importer shall in any other way fix or maintain the price at which a wholesaler shall sell any alcoholic beverage or beverage .

B. Notice of price increases.

No winery as defined in § 4-118.43 4.1-401 or brewery as defined in § 4-118.4 4.1-500 of the Code of Virginia shall increase the price charged any person holding a wholesale license for alcoholic beverages or beverages except by written notice to the wholesaler signed by an authorized officer or agent of the winery, brewery, bottler or importer which shall contain the amount and effective date of the increase. A copy of such notice shall also be sent to the board and shall be treated as confidential financial information, except in relation to enforcement proceedings for violation of this section.

No increase shall take effect prior to 30 calendar days following the date on which the notice is postmarked; provided that the board may authorize such price increases to take effect with less than the aforesaid 30 calendar days' notice if a winery, brewery, bottler or importer so requests and demonstrates good cause therefor.

C. No price discrimination by wineries, breweries and wholesalers.

No winery as defined in § 4-118.43 4.1-401 or brewery as defined in § 4-118.4 4.1-500 of the Code of Virginia shall discriminate in price of alcoholic beverages between different wholesale purchasers and no wholesale wine or beer licensee shall discriminate in price of alcoholic beverages or beverages between different retail purchasers except where the difference in price charged by such winery, brewery or wholesale licensee is due to a bona fide difference in the cost of sale or delivery, or where a lower price was charged in good faith to meet an equally low price charged by a competing winery, brewery or wholesaler on a brand and package of like grade and quality. Where such difference in price charged to any such wholesaler or retail purchaser does occur, the board may ask and the winery, brewery or wholesaler shall furnish written substantiation for the price difference.

D. Inducements.

No person holding a license authorizing the sale of alcoholic beverages or beverages at wholesale or retail shall knowingly induce or receive a discrimination in price prohibited by subsection C of this section .

§ 16. Farm wineries; percentage of Virginia products; other agricultural products; remote outlets.

A. No more than 25% of the fruits, fruit juices or other agricultural products used by the farm winery licensee shall be grown or produced outside this state the

Proposed Regulations

Commonwealth, except upon permission of the board as provided in § 4-25.1 B 4.1-219 of the Code of Virginia. This 25% limitation applies to the total production of the farm winery, not individual brands or labels.

B. The term "other agricultural products," as used in subsection A of this section, includes wine.

C. A farm winery license limits retail sales to the premises of the winery and to two additional retail establishments which need not be located on the premises. These two additional retail outlets may be moved throughout the state as long as advance board approval is obtained for the location, equipment and facilities of each remote outlet.

§ 17. Credit and debit cards.

Government stores may accept credit or debit cards from consumers for the retail purchase of alcoholic beverages. The board may establish policies to set purchase requirements, determine the credit or debit cards that will be accepted, provide for the collection of related fees, penalties or service charges where appropriate, establish credit procedures for returned merchandise and make any other decisions to carry out the purpose of this regulation.

§ 18. Regulation of the sale of alcoholic beverages in kegs and other containers; permit and registration; other requirements.

A. Generally.

The following definitions shall apply for purposes of this section:

1. "Keg." Any container capable of holding four gallons or more of beer; or wine or beverages and which is designed to dispense beer; or wine or beverages directly from the container for purposes of consumption; and

2. "Registration seal." Any document, stamp, declaration, seal, decal, sticker or device approved by the board which is designed to be affixed to kegs and which displays a registration number and such other information as may be prescribed by the board.

B. Permits.

The board may grant to any person licensed to sell wine; or beer or beverages at retail for off-premises consumption, a permit to sell such alcoholic beverages or beverages in kegs for off-premises consumption. Such permit shall be subject to suspension or revocation, as provided in § 4-37 § 4.1-225 of the Code of Virginia. No permit shall be required, however, to sell alcoholic beverages or beverages in kegs to banquet licensees or to retail licensees for on-premises consumption. Sales of such kegs to banquet licensees shall only be permitted upon

presentation of a banquet license by the purchaser to the seller.

C. Restrictions.

1. No person licensed by the board to sell wine; or beer or beverages at retail for off-premises consumption, or any officer, agent or employee thereof, shall sell any such alcoholic beverage or beverages in a keg without having (i) obtained a permit pursuant to subsection B of this section authorizing such sales, (ii) registered the sale on a form prescribed by the board, and (iii) affixed a registration seal on the keg at the time of sale; provided, if the purchaser takes possession of the keg at the premises of the wholesale licensee pursuant to subsection G of this section, the wholesale licensee shall affix the registration seal.

2. Prior to the sale of alcoholic beverages in kegs, the keg registration declaration and receipt form provided by the board shall be properly completed and shall contain:

a. The name and address of the purchaser verified by valid identification as defined in VR 125-01-5 § 2 B.

b. The type and number of the identification presented by the purchaser;

c. A statement, signed by the purchaser, that the purchaser is 21 years of age or older, does not intend to allow persons under 21 years of age to consume the alcoholic beverages purchased, and that the purchaser will not remove or obliterate the key registration tag affixed to the keg or allow its removal or obliteration; and

d. The particular address or location where the keg will be consumed, and the date or dates on which it will be consumed.

3. Where the purchaser obtains more than one keg for consumption at the same location and on the same date, only one keg registration declaration and receipt form must contain all required information. All other keg registration declaration and receipt forms for that particular transaction shall contain the registration number from the fully completed form as a reference and be signed by the purchaser. Such keg registration declaration and receipt forms which contain the reference number of a fully completed form and have been signed by the purchaser constitute a valid and properly completed keg registration and declaration receipt.

4. The keg registration seal affixed to the keg may serve as the purchaser's receipt. Upon receipt of a properly registered keg from a consumer, the retail licensee shall remove and obliterate the keg

Proposed Regulations

registration seal from the keg and note such action on the keg registration declaration and receipt form to be retained by the retail licensee on the licensed premises. Kegs made of disposable packaging do not have to be returned to the retail licensee. The retailer shall indicate on the keg declaration and receipt form that the keg was not returnable due to its disposable packaging.

D. For the purpose of tracing the kegs and purchaser responsibility, it shall be the responsibility of the seller to affix the properly completed and signed keg registration seal to all containers of four gallons or more of alcoholic beverages prior to the container leaving control of the seller.

E. Except in accordance with these regulations, no person shall remove, alter, deface, or obliterate the registration seal affixed to a keg pursuant to this regulation. Throwing away empty kegs made of disposable packaging shall not constitute obliteration of the keg registration seal. If any nonlicensee of the board is in possession of a keg containing alcoholic beverages, and which keg does not bear the registration seal, or upon which keg the registration seal has been altered, defaced or obliterated, the container and its contents shall be deemed to be contraband and subject to seizure and forfeiture.

F. Any retail licensee granted a permit by the board pursuant to subsection B of this section shall maintain a complete and accurate record of all registration forms and other documentation of the sale of kegs at the place of business designated in his license for a period of one year. Such records shall include the registration seal for nondisposable kegs, which the retail licensee shall remove from the keg upon its return by the purchaser. Moreover, such records regarding keg sales shall at all during reasonable times hours be open to inspection by the board or its authorized representatives, special agents and other law-enforcement officers.

G. Before a purchaser may take possession of a keg at the premises of the wholesale licensee after purchasing such keg from a retail licensee, the purchaser shall be required to (i) complete the registration of the transaction at the premises of the retail licensee and (ii) deliver the registration seal to the wholesale licensee who shall affix it to the keg; however, no wholesale licensee may deliver possession of any such keg to the purchaser until the wholesale licensee has collected payment from the retail licensee pursuant to VR 125-01-3 § 3.

H. Except as authorized by the board, no person shall transfer possession of or give the registered keg or container to another person. This prohibition shall not apply, however, to the return of the registered container to the seller.

§ 19. Waiver of banquet license tax.

A. Qualifications.

Pursuant to § 4.1-111 of the Code of Virginia, the board may waive the banquet license tax for a duly organized not-for-profit corporation or association holding a nonprofit event. A "nonprofit event" means income from the event shall not exceed expenses for the event. Fixed costs, including but not limited to staff salaries, rent, utilities and depreciation, shall not be included as expenses.

B. Restrictions and conditions.

1. The applicant shall sign an affidavit certifying the not-for-profit status of the corporation or association and that the event being held is nonprofit.
2. The applicant may serve alcoholic beverages in any combination, the amount to be no more than that which equals the total alcohol content by volume in two kegs of beer (31 gallons).
3. The granting of a waiver is limited to two events per fiscal year (July 1 - June 30) for any qualifying corporation or association.

C. Exception.

The board may issue a permit authorizing a variance from subdivision B 2 for good cause shown.

§ 20. Grain alcohol; permits; records.

A. Permits.

The board may issue a yearly permit authorizing the permittee to purchase grain alcohol with a proof greater than 101 at government stores for any of the following purposes:

1. Industrial use;
2. Commercial use;
3. Culinary use; or
4. Medical use.

The application for such permits shall be on forms provided by the board.

B. Qualifications.

Permits may be issued to legitimate businesses for any one or more of the purposes stated in subsection A upon presentation of satisfactory evidence of the conduct of the business activity involved. For good cause shown, the board may issue a permit to an individual for any of the uses stated in subsection A.

C. Records.

Proposed Regulations

A person obtaining a permit must maintain complete and accurate records of all purchases for a period of three years, and the board and its special agents shall have free access during reasonable hours to all records required to be kept pursuant to this section.

D. Refusal, suspension or revocation of permit.

The board may refuse, suspend or revoke the permit if it shall have reasonable cause to believe that the permittee would use, has used or allowed to be used grain alcohol for any unlawful purpose, or that any cause exists under § 4.1-222 of the Code of Virginia for which the board may refuse to grant the applicant any license or has done any act for which the board might suspend or revoke a license under § 4.1-225 of the Code of Virginia.

VA.R. Doc. No. R94-39; Filed September 24, 1993, 11:42 a.m.



INSTRUCTIONS:

There is no charge for this permit. Complete and return application to:
 LICENSE RECORDS MANAGEMENT
 VIRGINIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
 2501 HERMITAGE ROAD
 P.O. BOX 27491
 RICHMOND VA 23281-17491

BUSINESS:

Company name _____
 Street address _____
 City _____ Virginia ZIP + 4 _____
 County _____

PURPOSE:

Intended use: _____

PURCHASE:

Purchase to be made from ABC store number: _____
 Store address _____
 City _____ Virginia Zip _____
 County _____

Estimate the amount of 190 proof grain alcohol required: BOTTLE SIZE PER MONTH OR PER YEAR
 J 375 ML
 J 1.75L

APPLICANT:

Applicant name _____
 Title _____
 Signature _____
 Company phone number _____



SPECIAL AGENT:

Purpose: Culinary Commercial Industrial Medical
 Comments: _____

Recommendation: Approval Denial
 Signature _____ Date _____
 Territory number _____

SPECIAL AGENT IN CHARGE:

Permit number _____ Effective date _____
 Special Agent assigned _____ Date _____
 City/County _____ District _____

Purpose: Culinary Commercial Industrial Medical

Recommendation: Approved Denied
 Signature _____ Date _____

Proposed Regulations

VIRGINIA ASBESTOS LICENSING BOARD

Title of Regulation: VR 137-01-1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-501 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until December 20, 1993.

(See Calendar of Events section for additional information)

Basis: The statutory authority for the board to promulgate the Asbestos Contractors and Workers Public Participation Guidelines is found in § 54.1-501 of the Code of Virginia. The board is empowered to promulgate regulations setting standards for initial licensure, continuing licensure and conduct standards for asbestos contractors, asbestos RFS contractors, asbestos workers, supervisors, inspectors, management planners, project designers, project monitors, training providers and asbestos analytical laboratories.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process Act (APA) and the revisions to the APA made by the 1993 Virginia General Assembly by establishing procedures to be followed by the board in soliciting, receiving and considering public comment.

Substance: The proposed Asbestos Contractors and Workers Public Participation Guidelines contain the same language as the emergency Asbestos Contractors and Workers Public Participation Guidelines, which are currently in effect. Therefore, there is no change from the current status of the law.

Issues: The issues of the proposed asbestos PPG's are such that the public has the advantage of participating in the development of the asbestos licensing regulations. With the participation of the public, they will become more familiar with the contents and expectations of the licensing regulations. The advantage to the agency is such that with public knowledge of the regulations the agency should save considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed Asbestos Contractors and Workers Public Participation Guidelines affect approximately 5,515 individuals licensed as asbestos workers, supervisors, project designers, project monitors, asbestos inspectors and management planners; approximately 245 licensed asbestos contractors; approximately 95 licensed asbestos analytical laboratories and approximately 60 asbestos training providers.

Since the proposed public participation guidelines are identical to the current emergency public participation guidelines, there will be no additional cost to the agency in the implementation and compliance of this regulation.

Summary:

The Asbestos Contractors and Workers Public Participation Guidelines (PPG's) mandate public participation in the promulgation process of asbestos licensing regulations. The Department of Professional and Occupational Regulation (the agency) will maintain a mailing list to notify persons and organizations of intended regulatory action. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period" and a notice that final regulations have been adopted. The PPG's will outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days and will state whether or not a public hearing will be held. The PPG's give specific instances on when the agency must hold a comment period and when the agency must reevaluate the regulations. The PPG's establish the procedures for formulation and adoption of regulations and the procedures to be taken when substantial changes have been made prior to final adoption of the regulations. The use of and input from advisory committees to formulate regulations are established in the PPG's. The PPG's specify what meetings and notices will be published in The Virginia Register.

VR 137-01-1. Public Participation Guidelines.

§ 1. Mailing list.

The Virginia Asbestos Licensing Board (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.
2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.
3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to

Proposed Regulations

continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on the existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with

substantial impact have been made to the proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of the proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession;
2. Industry, professional and trade associations' mailing lists; and
3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1, 2, 3, 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R94-55; Filed September 29, 1993, 11:59 a.m.

BOARDS OF EDUCATION; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; SOCIAL SERVICES; AND YOUTH AND FAMILY SERVICES

Title of Regulations: VR 270-01-003, VR 470-02-01, VR 615-29-02, VR 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children.

Statutory Authority: §§ 16.1-311, 22.1-321, 22.1-323.2, 37.1-10, 37.1-182, 37.1-189.1, 63.1-25, 63.1-196.4, 66-10, and 66-24 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through December 17, 1993.

(See Calendar of Events section)

Proposed Regulations

for additional information)

Basis: Sections 16.1-311, 22.1-321, 22.1-323.2, 37.1-10, 37.1-182, 37.1-189.1, 63.1-25, 63.1-196.4, 66-10 and 66-24 of the Code of Virginia provide the boards' statutory authority to promulgate standards for regulation of residential facilities for children. The State Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth and Family Services have approved the proposed revisions for a 60-day period of public comment.

Purpose: The regulation is designed to assure that adequate care, treatment, and education are provided by children's residential facilities. The proposed revisions respond to legislation enacted by the Virginia General Assembly. They amend and clarify the requirements governing the duration of licenses/certificates and participation of residents in human research.

Substance: The regulation is designed to assure that adequate treatment, care, and education are provided by children's residential facilities.

Issues: The proposed revisions are designed to eliminate disparity between Virginia statutes and the regulation. The General Assembly enacted legislation which permits the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services to issue licenses/certificates for a period of up to three years. The General Assembly also enacted legislation concerning regulation of human research.

The proposed revisions are designed to clarify the regulation; simplify the regulatory process; and provide additional protection to residents of residential facilities.

Estimated Impact:

a. Number and types of regulated facilities affected: Approximately 150 children's residential facilities are regulated under the Standards for Interdepartmental Regulation of Residential Facilities for Children. Regulated facilities include facilities providing on-site educational programs for the educationally handicapped; facilities providing specialized treatment services for the mentally ill, mentally retarded, and substance abusers; facilities providing full-time care maintenance, protection, and guidance to children separated from their guardians; and juvenile justice facilities.

b. Projected cost to regulated facilities (and to the public, if applicable) for implementation and compliance: All impacted facilities are currently regulated under the Interdepartmental Standards and currently meet substantially similar requirements. No financial impact is anticipated.

c. Projected cost to agency for implementation and enforcement: All impacted facilities are currently

regulated under the Interdepartmental Standards. No financial impact is anticipated to implement the proposed revisions.

d. Source of funds (e.g., user fees, including fee structure; federal grants, other nongeneral fund revenue sources; general fund):

No financial impact is anticipated.

Summary:

The regulation is designed to assure that adequate care, treatment, and education are provided by children's residential facilities. The proposed revisions respond to legislation enacted by the Virginia General Assembly which permits the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services to issue licenses/certificates for periods of up to three years. The proposed revisions also respond to legislation enacted by the Virginia General Assembly concerning regulation of human research.

The proposed revisions amend and clarify the requirements governing the duration of licenses/certificates (§§ 1.1 and 1.12 et seq.) and participation of residents in human research (§§ 1.1 and 2.25). Definitions have been added, amended, clarified, and consolidated. Measurable and specific criteria for determining the duration of licenses/certificates have been established. Sections have been added: (i) requiring compliance with the terms of licenses/certificates, and (ii) indicating that a license/certificate may be revoked if a facility engages in willful action which jeopardizes the care or protection of residents. The conditions when licenses/certificates may be modified have been expanded. The stipulation that facilities located on separate pieces of property must have separate licenses/certificates is abolished. Early compliance has been deleted. Requirements that duplicate those of other regulatory agencies have been deleted. Requirements have been consolidated, to the extent possible, for public and private sector facilities. Approval of out-of-state facilities has been eliminated. The definition and requirements concerning participation of residents as subjects of human research are revised to conform with the statutory definition and the agencies' regulations.

VR 270-01-003, VR 470-02-01, VR 615-29-02, VR 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children.

PART I.
INTRODUCTION.

Article 1.
Definitions.

Proposed Regulations

§ 1.1. The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Adaptive behavior" means the effectiveness or degree with which individuals with diagnosed mental disabilities meet the standards of personal independence and social responsibility expected of their age and cultural group.

"Allegation" means an accusation that a facility is operating without a license or receiving public funds, or both, for services it is not certified to provide.

"Applicant" means the person, corporation, partnership, association or public agency which has applied for a license/certificate.

"Approval" means the process of recognizing that a public facility or an out-of-state facility has complied with standards for licensure or certification. (In this document the words "license" or "licensure" will include approval of public and out-of-state facilities except when describing enforcement and other negative sanctions which are described separately for these facilities.)

"Aversive stimuli" means physical forces (e.g. sound, electricity, heat, cold, light, water, or noise) or substances (e.g. hot pepper or pepper sauce on the tongue) measurable in duration and intensity which when applied to a client are noxious or painful to the client, but in no case shall the term "aversive stimuli" include striking or hitting the client with any part of the body or with an implement or pinching, pulling, or shaking the client.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities except the performance of medical procedures by medical personnel.

"Case record" or *"record"* means written information assembled in one folder or binder relating to one individual. This information includes social and medical data, agreements, notations of ongoing information, service plan with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Certificate to operate" means documentation of licensure or permission granted by the Department of Education to operate a school for the handicapped that is conveyed on a single license/certificate.

"Certification" means the process of recognizing that a facility has complied with those standards required for it to receive funding from one of the four departments for the provision of residential program services to children. (Under the Code of Virginia, the Board of Youth and Family Services is given authority to "approve" certain public and private facilities for the placement of juveniles. Similarly, school boards are authorized to pay, under certain conditions, for special education and related services in nonsectarian private residential schools for the handicapped that are "approved" by the Board of

Education. Therefore, in this context the word "approval" is synonymous with the word "certification" and will be termed certification for purposes of this process.)

"Chemical restraint" means the use of any pharmacological substance for the sole purpose of controlling a resident's behavior in the absence of a diagnosed medical or psychiatric condition. Chemical restraint does not include the appropriate use of medications as ordered by a licensed physician for treating medical or psychiatric conditions.

"Child" means any person legally defined as a child under state law. This term includes residents and other children coming in contact with the resident or facility (e.g., visitors).

"Child placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of public welfare or social services authorized to place children in foster homes or adoptive homes.

"Child with special needs" means a child in need of particular services because he is mentally retarded, developmentally disabled, mentally ill, emotionally disturbed, a substance abuser, in need of special educational services for the handicapped, or requires security services.

"Client" means a person receiving treatment or other services from a program, facility, institution or other entity regulated under these standards whether that person is referred to as a patient, resident, student, consumer, recipient, family member, relative, or other term.

"Complaint" means an accusation against a licensed/certified facility regarding an alleged violation of standards or law.

"Confinement" means staff directed temporary removal of a resident from contact with people through placing the resident alone in his bedroom or other normally furnished room(s). Confinement does not include timeout or seclusion.

"Contraband" means any item prohibited by law or by the rules and regulations of the agency, or any item which conflicts with the program or safety and security of the facility or individual residents.

"Coordinator" means the person designated by the Coordinating Committee to provide coordination and monitoring of the interdepartmental licensure/certification regulatory process.

"Corporal punishment" means the inflicting of pain or discomfort to the body through actions such as but not limited to striking or hitting with any part of the body or with an implement; or through pinching, pulling, or shaking; or through any similar action which normally inflicts pain or discomfort.

Proposed Regulations

"DOE" means the Department of Education.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DSS" means the Department of Social Services.

"DYFS" means the Department of Youth and Family Services.

"Department of Youth and Family Services standards for youth facilities" means those additional standards which must be met in order for a facility to receive funding from the Department of Youth and Family Services for the provision of residential treatment services as a juvenile detention facility, a facility providing youth institutional services, a community group home or other residential facility serving children in the custody or subject to the jurisdiction of a juvenile court or of the Department of Youth and Family Services except that the Interdepartmental Standards will be the Department of Youth and Family Services Standards for Youth Facilities for residential facilities receiving public funds pursuant to §§ 16.1-286 or 66-14 of the Code of Virginia for the provision of residential care to children in the custody of or subject to the jurisdiction of a juvenile court or of the Department of Youth and Family Services.

"Education standards" means those additional standards which shall be met in order for a facility to (i) receive a certificate to operate an educational program that constitutes a private school for the handicapped; or (ii) be approved to receive public funding for the provision of special education and related services to eligible children.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off of permanent staff or other situations which should reasonably be anticipated.

"Excursion" means a recreational or educational activity during which residents leave the facility under the direct supervision of facility staff for an extended period of time. Excursions include camping trips, vacations, and other similar overnight activities.

"Group home" means a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves up to 12 residents.

"Group residence" means a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves from 13 to 24 residents.

"Human research" means any medical or psychological systematic investigation designed to develop or contribute to general knowledge and which utilizes utilizing human subjects who which may be exposed to the possibility of

expose such human subjects to physical or psychological injury as a consequence of participation as subjects, and which departs from the application of those established and accepted therapeutic methods appropriate to meet the subjects' needs but does not include: .

1. The conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from human subject in the course of standard medical practice;

2. Epidemiological investigations; or

3. Medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death; to prevent the subject from becoming disfigured or physically or mentally incapacitated.

"Independent living program" means a program that is specifically approved to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

"Individual behavior management plan" means the planned, individualized, and systematic use of specific treatment techniques implemented by, or under the supervision of, personnel who have been professionally trained in behavior management and implemented to increase an individual's appropriate behaviors and to modify an individual's inappropriate or problem behaviors and replace them with behaviors that are appropriate and socially acceptable.

"Individualized service plan" means a written plan of action developed, and modified at intervals, to meet the needs of each resident. It specifies short and long-term goals, the methods and time frames for reaching the goals and the individuals responsible for carrying out the plan.

"Interdepartmental standards" means those standards for residential care which are common to all four departments and which shall be met by all subject residential facilities for children in order to qualify for licensure, certification or approval a license/certificate .

"Intrusive aversive therapy" means a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior through the application of aversive stimuli contingent upon the exhibition of such behavior. Intrusive aversive therapy does not include verbal therapies, seclusion, physical or mechanical restraints used in conformity with the applicable human rights regulations promulgated pursuant to § 37.1-84.1 of the Code of Virginia, or psychiatric medications which are used for purposes other than intrusive aversive therapy.

"Legal guardian" means the natural or adoptive parent(s) or other person(s), agency, or institution who has legal custody of a child.

"*Licensee*" means the person, corporation, partnership, association or public agency to whom a license *license/certificate* is issued and who is legally responsible for compliance with the standards and statutory requirements relating to the facility.

"*License/certificate*" means a document verifying approval to operate a residential facility for children and which indicates the status of the facility with respect to compliance with applicable licensure/certification standards.

"*Licensing/certification authority*" means the department or state board that is responsible under the Code of Virginia for the licensure, certification, or approval of a particular residential facility for children.

"*Licensure/certification*" means the process of granting legal permission to operate a residential facility for children and to deliver program services or recognizing that a facility has complied with standards. (Under the Code of Virginia, no person shall open, operate or conduct a residential school for the handicapped without a "certificate to operate" such school issued by the Board of Education. The issuance of such a "certificate to operate" grants legal permission to operate a school for the handicapped. Therefore, in this context, the term "certificate to operate" is synonymous with the word "licensure" and will be termed licensure for purposes of this process.)

"*Live in staff*" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

"*Living unit*" means the space in which a particular group of children in care of a residential facility reside. Such space contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the children who reside in the unit. Depending upon its design, a building may contain only one living unit or several separate living units.

"*Management of resident behavior*" means use of various practices, implemented according to group and individual differences, which are designed to teach situationally appropriate behavior and to reduce or eliminate undesirable behavior. Such practices include, but are not limited to, individual behavioral contracting, point systems, rules of conduct, token economies, and individual behavior management plans.

"*Mechanical restraint*" means the use of devices to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, but does not include the appropriate use of those devices used to provide support for the achievement of functional body position or proper balance and those devices used for specific medical and surgical treatment or treatment for self-injurious behavior.

"*Mental disabilities certification standards*" means those standards in addition to the Interdepartmental Standards which shall be met in order for a facility to receive funding from the Department of Mental Health, Mental Retardation and Substance Abuse Services for the provision of residential treatment services to mentally ill, emotionally disturbed, mentally retarded, developmentally disabled or substance abusing residents.

"*Mental disabilities licensure standards*" means, for those facilities that do not receive funding from the Department of Mental Health, Mental Retardation and Substance Abuse Services, those standards in addition to the Interdepartmental Standards which must be met in order for a facility to be licensed to provide care or treatment to mentally ill, emotionally disturbed, mentally retarded, developmentally disabled or substance abusing residents.

"*On duty*" means that period of time during which a staff person is responsible for the supervision of one or more children.

"*Parent*" means a natural or adoptive parent. Parent means either parent unless the facility has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody, which provides to the contrary. Parent also includes a surrogate parent appointed pursuant to provisions of the Department of Education's regulations governing special education programs for handicapped children and youth. An individual 18 years or older may have the authority to assert any rights under the Department of Education's regulations in his own name.

"*Pat down*" means a thorough external body search of a clothed resident.

"*Physical restraint*" means the restraint of a resident's body movements by means of physical contact by staff members. Physical restraint does not include physical prompts or guidance used with individuals with diagnosed mental disabilities in the education or training of adaptive behaviors (See definition of "adaptive behavior").

"*Placement*" means an activity by any person which provides assistance to a parent or legal guardian in locating and effecting the movement of a child to a foster home, adoptive home or to a residential facility for children.

"*Premises*" means the tract(s) of land on which any part of a residential facility for children is located and any buildings on such tract(s) of land.

"*Professional child and family service worker*" means an individual providing social services to a resident of a residential facility and his family. Such services are defined in Part V, Article 16.

"*Program*" means a combination of procedures or

Proposed Regulations

activities carried out in order to meet a specific goal or objective.

"Public funding" means funds paid by, on behalf of, or with the financial participation of the state Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; or Youth and Family Services.

"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure/certification of a residential facility for children.

"Resident" means a person admitted to a children's residential facility for supervision, care, training or treatment on a 24-hour per day basis. Resident includes children making preplacement visits to the facility.

"Residential facility for children" means a publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their legal guardians; that is subject to licensure, certification or approval licensure/certification pursuant to the provisions of the Code of Virginia cited in the Legal Base; and includes, but is not limited to, group homes, group residences, secure custody facilities, self-contained residential facilities, temporary care facilities and respite care facilities, except:

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as promulgated by the State Board of Social Services and in effect on January 1, 1987 (§ 63.1-196.4 of the Code of Virginia); and

2. Private psychiatric hospitals serving children will be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under its "Rules and Regulations for the Licensure of Private Psychiatric Hospitals."

"Respite care facility" means a facility that is specifically approved to provide short term, periodic residential care to children accepted into its program in order to give the legal guardians temporary relief from responsibility for their direct care.

"Responsible adult" means an adult, who may or may not be a staff member, who has been delegated authority to make decisions and to take actions necessary to assume responsibility for the safety and well-being of children assigned to his care. The term implies that the facility has reasonable grounds to believe that the responsible adult has sufficient knowledge, judgment and maturity commensurate to the demands of the situation for which he is assuming authority and responsibility.

"Rest day" means a period of not less than 32

consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Two successive rest days shall consist of a period of not less than 48 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Each successive rest day immediately following the second shall consist of not less than 24 additional consecutive hours.

"Right" is something to which one has a natural, legal or moral claim.

"Rules of conduct" means a listing of rules or regulations which is maintained to inform residents and others about behaviors which are not permitted and the consequences applied when the behaviors occur.

"Sanitize" means to wash or rinse with water containing a laundry bleach with an active ingredient of 5.25% sodium hypochlorite. The amount of bleach used may be in accordance with manufacturer's recommendation on the package.

"Seclusion" means placing a resident in a room with the door secured in any manner that prevents the resident from opening it.

"Secure custody facility" means a facility designed to provide, in addition to the appropriate treatment or service programs, secure environmental restrictions for children who must be detained and controlled on a 24-hour basis.

"Self-contained residential facility" means a residential setting for 13 or more residents in which program activities are systematically planned and implemented as an integral part of the facility's staff functions (e.g., services are self-contained rather than provided primarily through community resources). The type of program may vary in intensity according to the needs of the residents. Such settings include nonmedical as well as state-operated hospital based care.

"Severe weather" means extreme environment or climate conditions which pose a threat to the health, safety or welfare of residents.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Single license/certificate" means a document which grants approval to operate a residential facility for children and which indicates the status of the facility with respect to compliance with applicable certification standards.

"Standard" means a statement which describes in measurable terms a required minimum performance level.

"Strip search" means a visual inspection of the body of

Proposed Regulations

a resident when that resident's clothing is removed and an inspection of the removed clothing including wigs, dentures, etc. except the performance of medical procedures by medical personnel.

"Substantial compliance" means a demonstration by a facility of full compliance with sufficient applicable standards to clearly demonstrate that its program and physical plant can provide reasonably safe and adequate care, while approved plans of action to correct findings of noncompliance are being implemented.

"Systemic concern" means a documented, existing or potential problem which affects the overall operation of a program component within a facility. A systemic concern can exist in a program component even though the facility is maintaining substantial compliance with individual standards.

"Systemic deficiency" means documented, existing violations which indicate a deficiency in the overall operation of one or more program components.

"Team" means one or more representatives of the licensing certification regulatory authority(ies) designated to visit a residential facility for children to review its compliance with applicable standards.

"Temporary care facility" means a facility specifically approved to provide a range of services, as needed, on an individual basis for a period not to exceed 60 days except that this term does not include secure detention facilities.

"Timeout" means temporarily removing a resident and placing the resident alone in a special timeout room that is unfurnished or sparsely furnished and which contains few reinforcing environmental stimuli.

"Treatment" means any action which helps a person in the reduction of disability or discomfort, the amelioration of symptoms, undesirable conditions or changes in specific physical, mental, behavioral or social functioning.

"Visually impaired child" means one whose vision, after best correction, limits his ability to profit from a normal or unmodified educational or daily living setting.

"Wilderness camp" means a facility which provides a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school and community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning and therapy with real living needs and problems from which the resident can develop a sense of social responsibility and self worth.

Article 2.
Legal Base.

§ 1.2. The Code of Virginia is the basis for the requirement that private residential facilities for children be licensed, certified and approved. It also authorizes the several departments to operate or reimburse certain public facilities. In addition, P. L. 94-63 and Title XX of the Social Security Act require the establishment of quality assurance systems.

§ 1.3. The State Board of Youth and Family Services and the Department of Youth and Family Services are responsible for approval of facilities used for the placement of court-referred juveniles, as specified by § 16.1-286 and §§ 66-13 and 66-14 of the Code of Virginia, for promulgating a statewide plan for detention and other care facilities and for prescribing standards for such facilities pursuant to §§ 16.1-310 through 16.1-314 of the Code of Virginia; and for establishing and maintaining a system of community group homes or other residential care facilities pursuant to § 66-24 of the Code of Virginia.

§ 1.4. The State Board of Education is responsible for issuing certificates to operate (licenses) for residential schools for the handicapped in the Commonwealth of Virginia, as specified in Chapter 16 of Title 22.1 (§§ 22.1-319 through 22.1-335) of the Code of Virginia. It is further responsible for the general supervision of the public school system for all school age residents of Virginia (for handicapped children, ages 2-21) and for approval of private nonsectarian education programs for the handicapped, as specified by § 22.1-218 of the Code of Virginia.

§ 1.5. The Department of Mental Health, Mental Retardation and Substance Abuse Services is responsible for licensure of licensing/certifying facilities or institutions for the mentally ill, mentally retarded, and substance abusers within the Commonwealth of Virginia, as specified in Chapter 8 of Title 37.1 (§§ 37.1-179 through 37.1-189) of the Code of Virginia. It is also responsible for the certification of licensing/certifying group homes as specified in § 37.1-199 of the Code of Virginia.

§ 1.6. The Department of Social Services is responsible for licensure of licensing/certifying certain child welfare agencies and facilities in Virginia, as specified in Chapter 10 of Title 63.1 (§§ 63.1-195 through 63.1-219) of the Code of Virginia. It is also responsible for the certification of licensing/certifying local welfare/social services department "agency operated" group homes, as specified in § 63.1-56.1 of the Code of Virginia.

Article 3.
Interdepartmental Agreement.

§ 1.7. An "Agreement for Interdepartmental Licensure and Certification of Children's Residential Facilities" was approved by the Director of the Department of Corrections; the Commissioners of the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Social Services; and the Superintendent of Public Instruction and was initially

Proposed Regulations

signed on January 8-9, 1979. The agreement was most recently updated effective September 30, 1984.

This agreement commits the above departments to apply the same standards to both public and private facilities and provides a framework for:

1. The joint development and application of ~~licensure and certification~~ *licensure/certification* standards;
2. A single coordinated ~~licensure, certification and approval~~ *licensure/certification* process that includes:
 - a. A single application for appropriate ~~licensure, certification or approval~~ *licensure/certification* ;
 - b. A system for review of compliance with applicable standards;
 - c. A ~~single~~ license/certificate issued under the authority of the appropriate department(s) or board(s); and
 - d. Clear lines of responsibility for the enforcement of standards.
3. An Office of the Coordinator to provide central coordination and monitoring of the administration of the interdepartmental ~~licensure/certification~~ *regulatory* program.

Article 4.

General ~~Licensing/Certification~~ *Licensure/Certification* Requirements.

§ 1.8. All residential facilities for children must demonstrate an acceptable level of compliance with the Interdepartmental Standards and other applicable ~~licensure~~ *licensure/certification* requirements (e.g., Mental Disabilities Licensure Standards) and shall submit a plan of corrective action acceptable to the ~~licensing~~ *regulatory* authority for remedying within a specified time any noncompliance in order to be licensed to operate or be certified to receive children in Virginia. Facilities also shall demonstrate an acceptable level of compliance with other applicable standards, such as Education Standards, Mental Disabilities Certification Standards and Department of Youth and Family Services Standards for Youth Facilities, and submit a plan of corrective action acceptable to the ~~certification~~ *regulatory* authority for remedying within a specified time any noncompliance in order to be ~~certified or approved~~ *licensed/certified* .

§ 1.9. Investigations of applications for licensure/certification will be carried out by representatives of the ~~licensure/certification~~ *regulatory* authority with each representative participating in the evaluation of compliance with applicable standards. The decision to ~~license or certify~~ *license/certify* will be based primarily on the findings and recommendations of these representatives of the ~~licensing/certification~~ *regulatory*

authority.

§ 1.10. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law. Corporations not organized and empowered solely to operate residential facilities for children shall provide for such operations in their charters.

Article 5.

The License/Certificate.

§ 1.11. The interdepartmental program will utilize a ~~single~~ *single* ~~licensure/certification~~ *regulatory* process encompassing the Interdepartmental Standards and ~~certification~~ *other* ~~licensure/certification~~ standards. A ~~single document~~ *single document* license/certificate will be issued to each qualified facility which will, under appropriate statutory authority(ies), grant permission to operate a residential facility for children or certify ~~approval for the placement of children using public funds and which will indicate the status of each facility with respect to compliance that a facility has complied~~ *approval for the placement of children using public funds and which will indicate the status of each facility with respect to compliance that a facility has complied* with applicable ~~certification~~ *licensure/certification* standards.

§ 1.12. The terms of any license/certificate issued shall include: (i) the operating name of the facility; (ii) the name of the individual, partnership, association or corporation or public agency to whom the license/certificate is issued; (iii) the physical location of the facility; (iv) the nature of the population; (v) the maximum number of persons to be accepted for care; (vi) the effective dates of the ~~license~~ *license/certificate* ; and (vii) other specifications *and stipulations* prescribed within the context of the standards.

§ 1.13. *The facility shall comply with the terms of the license/certificate.*

~~§ 1.13.~~ § 1.14. The license/certificate is not transferable and automatically expires when there is a change of ownership ; or sponsorship ; or location; or when there is a ~~substantial change in services or clientele which would alter the evaluation findings and terms under which the facility was licensed/certified~~ .

~~§ 1.14.~~ Separate ~~licenses/certificates~~ *licenses/certificates* are required for facilities maintained on separate pieces of property which do not have a common boundary, even though these may be operated under the same management and may share services or facilities.

§ 1.15. The current license/certificate shall be posted at all times in a place conspicuous to the public.

Article 6.

Types of Licenses/Certificates.

§ 1.16. ~~An annual~~ *A triennial* license/certificate ~~may shall~~ be issued to a residential facility for children that is subject to the ~~licensure~~ *regulatory* authority of the

Departments of Education; Mental Health; Mental Retardation and Substance Abuse Services; or Social Services DOE, DMHMRSAS, or DSS and which is applying for license/certificate renewal while holding an annual or triennial license/certificate when its activities, services and requirements substantially meet or exceed the minimum standards and requirements set forth in the Interdepartmental Standards, applicable certification licensure/certification standards and any additional requirements that may be specified in relevant applicable statutes. An annual license/certificate is effective for 12 consecutive months, unless it is revoked or surrendered sooner.

§ 1.17. A provisional license/certificate may be issued whenever an applicant is temporarily unable to comply with all of the requirements set forth in the Interdepartmental Standards or applicable certification standards and under the condition that the requirements will be met within a specified period of time. A facility with provisional licensure/certification is required to demonstrate that it is progressing toward compliance. A provisional license/certificate shall not be issued where the noncompliance poses an immediate and direct danger to the health and safety of the residents.

A. For those facilities for which the Department of Mental Health, Mental Retardation and Substance Abuse Services is the licensing authority as specified in Chapter 8 of Title 37.1 of the Code of Virginia, at the discretion of the licensing authority a provisional license may be issued to operate a new facility in order to permit the applicant to demonstrate compliance with all requirements. Such a provisional license may be renewed, but such provisional licensure and any renewals thereof shall not exceed a period of six successive months. A provisional licensure also may be issued to a facility which has previously been fully licensed when such facility is temporarily unable to comply with all licensing standards. However, pursuant to § 37.1-183.2 of the Code of Virginia, such a provisional license may be issued for any period not to exceed ninety days and shall not be renewed.

B. For those facilities for which the Department of Social Services is the licensing authority as specified in Chapter 10 of Title 63.1 of the Code of Virginia, a provisional license may be issued following the expiration of an annual license. Such provisional licensure and any renewals thereof shall not exceed a period of six successive months. At the discretion of the licensing authority, a conditional license may be issued to operate a new facility in order to permit the applicant to demonstrate compliance with all requirements. Such a conditional license may be renewed, but such conditional licensure and any renewals thereof shall not exceed a period of six successive months.

§ 1.17. Annual licenses/certificates.

A. An annual license/certificate shall be issued to a residential facility for children which is subject to the

regulatory authority of DOE, DMHMRSAS, or DSS and:

1. Submits a renewal application while holding a conditional or provisional license/certificate and which demonstrates that its programs and services substantially comply with the Interdepartmental Standards, applicable licensure/certification standards, and any additional requirements specified in applicable statutes;

2. Submits a renewal application while holding an annual or triennial license/certificate and one systemic deficiency has been identified during the licensure/certification period without the facility taking acceptable, documented corrective action; or

3. Whose sponsor requests establishment of a new facility to care for the same target population as that currently being served by the sponsor in facilities regulated through the Interdepartmental Regulatory Program.

B. An annual license/certificate may be renewed, but an annual license/certificate and any renewals thereof shall not exceed a period of 36 successive months.

§ 1.18. An extended license/certificate may be issued following the expiration of an annual or an extended license/certificate provided the applicant qualifies for an annual license/certificate and, additionally, it is determined by the licensing/certification authority that (i) the facility has a satisfactory compliance history; and (ii) the facility has had no significant changes in its program, population, sponsorship, staffing and management, or financial status during the term of the previous annual or extended license. In determining whether a facility has a satisfactory compliance history, the licensing/certification authority shall consider the facility's maintenance of compliance as evidenced by licensing complaints; monitoring visits by staff of the licensing authority; reports of health, fire and building officials; and other sources of information reflecting on the facility's continued compliance with applicable standards. An extended license is effective for a specified period not to exceed 24 consecutive months, unless it is revoked or surrendered sooner.

§ 1.18. Conditional licenses/certificates.

A. A conditional license/certificate shall be issued to a residential facility for children which is subject to the regulatory authority of DOE, DMHMRSAS or DSS and is:

1. Beginning initial operation and whose sponsor is not operating one or more additional facilities regulated through the Interdepartmental Regulatory Program, or

2. Sponsored by a currently established Interdepartmental Regulatory Program sponsor who begins operation, at a new or currently regulated site, of a program servicing a different target population

Proposed Regulations

than that being served by the sponsor.

B. A facility holding a conditional license/certificate shall demonstrate progress toward compliance.

C. A conditional license/certificate may be renewed, but a conditional license/certificate and any renewals thereof shall not exceed a period of six successive months.

§ 1.19. Provisional licenses/certificates.

A. A provisional license/certificate shall be issued to a residential facility for children which is subject to the regulatory authority of DOE, DMHMRSAS, or DSS and:

1. Applies for renewal of an annual or triennial license/certificate, and
2. During the licensure/certification period there have been:
 - a. Two or more occasions when the same systemic deficiency has been identified without the facility taking acceptable, documented corrective action; or
 - b. Two or more occasions when different systemic deficiencies have been identified without the facility taking acceptable, documented corrective action.

B. A provisional license/certificate shall be issued to a residential facility for children which is subject to the regulatory authority of DOE, DMHMRSAS, or DSS; holds a conditional license/certificate; and, during the licensure/certification period, demonstrates that its programs and services do not substantially comply with the Interdepartmental Standards, applicable licensure/certification standards, or any additional requirements specified in applicable statutes.

C. A provisional license/certificate may be renewed, but a provisional license/certificate and any renewals thereof shall not exceed a period of six successive months.

D. A facility holding a provisional license/certificate shall demonstrate progress toward compliance. A provisional license/certificate shall not be issued when the noncompliance poses an immediate and direct danger to the health and safety of the residents.

~~§ 1.19.~~ § 1.20. A residential facility for children operating under certification by the Department of Youth and Family Services may be issued a ~~certificate~~ license/certificate indicating the status of the facility with respect to compliance with the Interdepartmental Standards, applicable ~~certification~~ licensure/certification standards and any additional requirements specified in applicable statutes. Such a ~~certificate~~ is effective for a specified period not to exceed 24 consecutive months license/certificate shall be effective for the period specified by the Board of Youth and Family Services, unless it is revoked or surrendered sooner.

~~§ 1.20. The term of any certification(s) issued on an annual, the effective dates of the license:~~

~~§ 1.21. There shall be no fee to the licensee for licensure, certification or approval licensure/certification.~~

Article 7.

Preapplication Consultation Services.

§ 1.22. Upon receipt of an inquiry or a referral, preapplication consultation services will be made available by the Office of the Coordinator and the participating departments.

§ 1.23. Preapplication consultation may be designed to accomplish the following purposes:

1. To explain standards and statutes;
2. To help the potential applicant explore the operational demands of a licensed/certified/approved licensed/certified residential facility for children;
3. To provide assistance in locating sources of information and technical assistance;
4. To refer the potential applicant to appropriate agencies; such as, the Department of Health, the State Fire Marshal, local fire department, and local building officials; and
5. To comment, upon request, on plans for proposed construction or on existing property in terms of suitability for the purposes proposed. Such comments shall be limited to advice on basic space considerations.

Article 8.

The Initial Application.

§ 1.24. The application for a license to operate a residential facility for children shall be available from the Office of the Coordinator and the participating departments.

§ 1.25. All application forms and related information requests shall be designed to assure compliance with the provision of standards and relevant statutes.

§ 1.26. Completed applications along with other information required for licensure, certification or approval licensure/certification shall be submitted at least 60 days in advance of the planned opening date. Receipt shall be acknowledged.

Article 9.

The Investigation.

§ 1.27. Following receipt and evaluation of each completed application, a team will be organized made up of representatives from the departments which will be

Proposed Regulations

participating in the review of that particular facility.

§ 1.28. The team will arrange and conduct an on-site inspection of the proposed facility; a thorough review of the proposed services; and investigate the character, reputation, status, and responsibility of the applicant.

Article 10. Allowable Variance.

§ 1.29. The ~~licensing/certification~~ regulatory authority has the sole authority to waive a standard either temporarily or permanently when in its opinion:

1. Enforcement will create an undue hardship;
2. The standard is not specifically required by statute or by the regulations of another government agency; and
3. Resident care would not be adversely affected.

§ 1.30. Any request for ~~an allowable a~~ variance shall be submitted in writing to the ~~licensing/certification~~ regulatory authority.

§ 1.31. The denial of a request for a variance is appealable through the normal appeals process when it leads to the denial or revocation of ~~licensure/certification~~ a license/certificate .

Article 11. Decision Regarding Licensure/Certification.

§ 1.32. Within 60 days of receipt of a properly completed application, the investigation will be completed and the applicant will be notified in writing of the decision regarding licensure/certification.

Article 12. Issuance of a License, Certificate or Approval License/Certificate .

§ 1.33. Private facilities.

If ~~licensure/certification~~ (either annual, provisional or extended) is granted, the facility will be issued a license/certificate with an accompanying letter citing any areas of noncompliance with standards. This letter will also include any specifications of the license and may contain recommendations.

§ 1.34. Public and out-of-state facilities.

If approval is granted, the facility will be issued a certificate of approval indicating that it has met standards required for it to operate and receive public funds.

§ 1.33. When licensure/certification is granted, the facility shall be issued a license/certificate. Any stipulations of the licensure/certification shall be enumerated on the

license/certificate or in an accompanying letter which is referenced on the license/certificate.

Article 13. Intent to Deny a License, Certificate or Approval License/Certificate .

~~§ 1.35.~~ § 1.34. If denial of a license, certificate or approval license/certificate is recommended, the facility will be notified in writing of the deficiencies and the proposed action.

~~§ 1.36.~~ § 1.35. Private facilities.

The notification of intent to deny a license or certificate license/certificate will be a letter signed by the ~~licensing/certification~~ regulatory authority(ies) and sent by certified mail to the facility. This notice will include:

1. A statement of the intent of the ~~licensing/certification~~ regulatory authorities to deny;
2. A list of noncompliances and circumstances leading to the denial; and
3. Notice of the facility's rights to a hearing.

~~§ 1.37.~~ § 1.36. Locally-operated facilities.

The notification of intent to deny a license or certificate license/certificate will be a letter signed by the ~~licensing/certification~~ regulatory authority(ies) sent by certified mail to the facility and to the appropriate local governing body or official responsible therefore, stating the reasons for the action, as well as the applicable state board or departmental sanctions or actions to which they are liable.

~~§ 1.38.~~ § 1.37. State-operated public facilities.

The notification of intent to deny an approval a license/certificate will be a letter signed by the ~~licensing/certification~~ regulatory authority(ies) sent by certified mail to the facility, to the appropriate department head, and to the Secretary stating the reasons for the action and advising appropriate sanctions or actions.

§ 1.39. Out-of-state facilities.

The notification of denial of approval will be a letter signed by the ~~licensing/certification~~ authority(ies) sent by certified mail to the facility and to each of the four departments stating the reasons for the action. Any department having children placed in such a facility shall be responsible for immediate removal of the children when indicated.

~~§ 1.40.~~ § 1.38. The hearing.

An interdepartmental hearing will be arranged when necessary. Hearings will be conducted in accordance with

Proposed Regulations

the requirements of the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia. Each ~~licensing/certification~~ regulatory authority will be provided with the report of the hearing on which to base the ~~licensing regulatory~~ authority's final decision. The Office of the Coordinator will be notified of the ~~licensing regulatory~~ authority's decision within 30 days after the report of the hearing is submitted. When more than one ~~licensing/certification~~ regulatory authority is involved, they will coordinate the final decision.

§ 1-41: § 1.39. Final decision.

A letter will be sent by registered mail notifying the facility of the final decision of the ~~licensing/certification~~ regulatory authorities. This letter will be drafted for the signatures of those departmental authorities who are delegated responsibility for such actions by statute. In case of denial, the facility shall cease operation or change its program so that it no longer requires licensure/certification. This shall be done within 30 days.

Article 14. Renewal of License/Certificate.

§ 1-42: § 1.40. Approximately 90 days prior to the expiration of a license/certificate, the licensee will receive notice of expiration and an application for renewal of the license/certificate. The materials to be submitted will be indicated on the application.

In order to renew a license/certificate, the licensee shall complete the renewal application and return it and any required attachments. The licensee should submit this material within 30 days after receipt in order to allow at least 60 days to process the application prior to expiration of the ~~license license/certificate~~ .

§ 1-43: § 1.41. The process for review of the facility and issuance or denial of the license/certificate will be the same as for an initial application (See Part I, Articles 8, 9, 12, 13).

Article 15. Early Compliance.

§ 1-44: A provisional or conditional license/certificate may be replaced with an annual license/certificate when all of the following conditions exist:

1. The facility complies with all standards as listed on the face of the provisional or conditional license/certificate well in advance of its expiration date and the facility is in substantial compliance with all other standards;

2. Compliance has been verified by an on-site observation by a representative(s) of the ~~licensing/certification~~ authority or by written evidence provided by the licensee; and

3. All other terms of the license/certificate remain the same.

§ 1-45: A request to replace a provisional license/certificate and to issue an annual license/certificate shall be made in writing by the licensee.

§ 1-46: If the request is approved, the effective date of the new annual license/certificate will be the same as the beginning date of the provisional license/certificate.

Article 16. Situations Requiring a New Application.

§ 1-47: A new application shall be filed in the following circumstances:

1. Change of ownership or sponsorship;
2. Change of location; or
3. Substantial change in services provided or target population.

Article 17: 15. Modification of a License/Certificate.

§ 1-48: § 1.42. The conditions of a license/certificate may be modified during the term of the license ~~license/certificate~~ with respect to the number of residents, the capacity, residents' age range , facility location, or other conditions which do not constitute substantial changes in the services or target population.

The licensee shall submit a written report of any contemplated changes in operation which would affect either the terms of the license/certificate or the continuing eligibility for a ~~license/certificate~~ licensure/certification .

A determination will be made as to whether changes may be approved and the license/certificate modified accordingly or whether an application for a new license/certificate must be filed. The licensee will be notified in writing within 30 days of receipt of the request as to whether the modification is approved or a new ~~license license/certificate~~ is required.

Article 18: 16. Visitation of Facilities.

§ 1-49: § 1.43. Representatives of the departments shall make announced and unannounced visits during the effective dates of the license/certificate. The purpose of these visits is to monitor compliance with applicable standards.

Article 19: 17. Investigation of Complaints and Allegations.

§ 1-50: § 1.44. The four departments are responsible for

complete and prompt investigation of all complaints and allegations, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law-enforcement authority.

Article 20-18.
Revocation of License/Certificate.

~~§ 1-51.~~ § 1.45. Grounds for revocation.

The ~~license, certificate or approval~~ license/certificate may be revoked when the licensee:

1. Violates any provision of the applicable ~~licensing~~ laws or any applicable standards made pursuant to such laws;
2. Permits, aids or abets the commission of any illegal act in such facility;
3. Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children; ~~or~~
4. Deviates significantly from the program or services for which a ~~license~~ license/certificate was issued without obtaining prior written approval from the ~~licensing/certification~~ regulatory authority or fails to correct such deviations within the time specified : ; or
5. Engages in a willful action which jeopardizes the care or protection of residents.

~~§ 1-52.~~ § 1.46. Notification of intent to revoke.

If revocation of a ~~license, certificate or approval~~ license/certificate is recommended, the facility will be notified in writing of the deficiencies and the proposed action.

~~§ 1-53.~~ § 1.47. Private facilities.

The notification of intent to revoke a ~~license or certificate~~ license/certificate will be a letter signed by the ~~licensing/certification~~ regulatory authority(ies) sent by certified mail to the facility. This notice will include:

1. A statement of the intent of the ~~licensing/certification~~ regulatory authorities to revoke;
2. A list of noncompliances and circumstances leading to the revocation; and
3. Notice of the facility's rights to a hearing.

§ 1.54. § 1.48. Locally-operated facilities.

The notification of intent to revoke a ~~license or certificate~~ license/certificate will be a letter signed by the ~~licensing/certification~~ regulatory authority(ies) sent by

certified mail to the facility and to the appropriate local governing body or official responsible therefore stating the reasons for the action as well as the applicable state board or departmental sanctions or actions to which they are liable.

~~§ 1-55.~~ § 1.49. State-operated public facilities.

The notification of intent to revoke ~~an approval a~~ license/certificate will be a letter signed by the ~~licensing/certification~~ regulatory authority(ies) sent by certified mail to the facility, to the appropriate department head, and to the appropriate Secretary in the Governor's Cabinet, stating the reasons for the action and advising appropriate sanctions or actions.

~~§ 1-56.~~ Out-of-state facilities.

The ~~notification of revocation of approval will be a~~ letter signed by the ~~licensing/certification~~ authority(ies) sent by certified mail to the facility, and to each of the four departments stating the reasons for the action. Any department having children placed in such a facility shall be responsible for immediate removal of the children when indicated.

~~§ 1-57.~~ § 1.50. The hearing.

An interdepartmental hearing will be arranged, when necessary. Hearings will be conducted in accordance with the requirements of the Administrative Process Act, §9-6.14:1 et seq. of the Code of Virginia. Each ~~licensing/certification~~ regulatory authority will be provided with the report of the hearing on which to base the ~~licensing~~ regulatory authority's final decision.

The Office of the Coordinator will be notified of the ~~licensing~~ regulatory authority's decision within 30 days after the report of the hearing is submitted. When more than one ~~licensing/certification~~ regulatory authority is involved, they will coordinate the final decision.

~~§ 1-58.~~ § 1.51. Final decision.

A letter will be sent by registered mail notifying the facility of the final decision of the ~~licensing/certification~~ regulatory authorities. This letter will be drafted for the signatures of those departmental authorities who are delegated responsibility for such actions by statute. In case of revocation, the facility shall cease operation or change its program so that it no longer requires licensure/certification. This shall be done within 30 days.

~~§ 1-59.~~ § 1.52. Suppression of unlicensed operations.

The suppression of illegal operations or activities involves action against a person or group operating without a license/certificate or operating after a license/certificate has expired or has been denied or revoked. All allegations of illegal operations shall be investigated promptly. After consultation with counsel, action may be initiated by the

Proposed Regulations

~~licensing/certification~~ regulatory authority against illegally operating facilities by means of civil action, by injunction or by criminal action.

§ 1.60. § 1.53. Appeals.

A. Following receipt of the final order transmitting the decision of the ~~licensing/certification~~ regulatory authority(ies) after an administrative hearing, the applicant/licensee has the right to appeal pursuant to the applicable sections of the Administrative Process Act, § 9-6.14.1 et seq. of the Code of Virginia.

B. Continued operation of a facility during the appeal process shall conform to applicable sections of the Code of Virginia.

PART II. ORGANIZATION AND ADMINISTRATION.

Article 1. Governing Body.

§ 2.1. The residential facility for children shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

§ 2.2. The licensee shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the licensee.

Article 2. Responsibilities of the Licensee.

§ 2.3. The licensee shall appoint a qualified chief administrative officer to whom it delegates in writing the authority and responsibility for the administrative direction of the facility.

§ 2.4. The licensee shall develop and implement written policies governing the licensee's relationship to the chief administrative officer that shall include, but shall not be limited to:

1. Annual evaluation of the performance of the chief administrative officer; and

2. Provision for the chief administrative officer to meet with the governing body or with the immediate supervisor to periodically review the services being provided, the personnel needs and fiscal management of the facility.

§ 2.5. The licensee shall develop a written statement of the philosophy and the objectives of the facility including a description of the population to be served and the program to be offered.

§ 2.6. The licensee shall review, at least annually, the program of the facility in light of the population served and the objectives of the facility.

§ 2.7. The licensee shall review, develop and implement programs and administrative changes in accord with the defined purpose of the facility.

Article 3. Fiscal Accountability.

§ 2.8. The facility shall have a documented plan of financing which gives evidence that there are sufficient funds to operate.

§ 2.9. A new facility shall with the initial application document funds or a line of credit sufficient to cover at least 90 days of operating expenses unless the facility is operated by a state or local government agency, board or commission.

§ 2.10. A new facility operated by a corporation, unincorporated organization or association, an individual or a partnership shall submit with the initial application evidence of financial responsibility. This shall include:

1. A working budget showing projected revenue and expenses for the first year of operation; and

2. A balance sheet showing assets and liabilities.

§ 2.11. Facilities having an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:

1. A copy of the facility's most recently completed financial audit;

2. A report on any changes in income, expenses, assets, and liabilities that significantly change the fiscal condition of the facility as reflected in the financial audit submitted or a statement that no such changes have occurred; and

3. A working budget showing projected revenue and expenses for the coming year.

§ 2.12. Facilities operated by state or local government agencies, boards and commissions that do not have an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include a working budget showing appropriated revenue and projected expenses for the coming year.

§ 2.13. Facilities operated by corporations, unincorporated organizations or associations, individuals or partnerships that do not have a rate set in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:

1. An operating statement showing revenue and expenses for the past operating year;

2. A working budget showing projected revenue and expenses for the coming year;

3. A balance sheet showing assets and liabilities; and

4. A written assurance from the licensee that the documentation provided for in subdivisions 1, 2, and 3 above presents a complete and accurate financial report reflecting the current fiscal condition of the facility.

§ 2.14. The facility shall provide additional evidence of financial responsibility as the ~~licensing~~ regulatory authority, at its discretion, may require.

Article 4. Internal Operating Procedures.

§ 2.15. There shall be evidence of a system of financial record keeping that is consistent with generally accepted accounting principles unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.16. There shall be a written policy, consistent with generally accepted accounting principles, for collection and disbursement of funds unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.17. There shall be a system of financial record keeping that shows a separation of the facility's accounts from all other records.

Article 5. Insurance.

§ 2.18. A facility shall maintain liability insurance covering the premises and the facility's operations.

§ 2.19. There shall be liability insurance on vehicles operated by the facility.

Article 6. Bonding.

§ 2.20. Those members of the governing body and staff who have been authorized responsibility for handling the funds of the facility shall be bonded.

Article 7. Fund-Raising.

§ 2.21. The facility shall not use residents in its fund-raising activities without written permission of legal guardian.

Article 8. Relationship to ~~Licensing~~ Regulatory Authority.

§ 2.22. The facility shall submit or make available to the

~~licensing~~ regulatory authority such reports and information as the ~~licensing~~ regulatory authority may require to establish compliance with these standards and the appropriate statutes.

§ 2.23. The governing body or its official representative shall notify the ~~licensing~~ regulatory authority(ies) within five working days of:

1. Any change in administrative structure or newly hired chief administrative officer; and
2. Any pending changes in the program.

§ 2.24. In the event of a disaster, fire, emergency or any other condition at the facility that may jeopardize the health, safety and well-being of the children in care, the facility shall:

1. Take appropriate action to protect the health, safety and well-being of the children in care;
2. Take appropriate actions to remedy such conditions as soon as possible, including reporting to and cooperating with local health, fire, police or other appropriate officials; and
3. Notify the ~~licensing~~ regulatory authority(ies) of the conditions at the facility and the status of the residents as soon as possible.

Article 9. Participation of Residents in Research.

§ 2.25. ~~The facility shall establish and implement written policies and procedures regarding the participation of residents as subjects in research that are consistent with Chapter 13 of Title 37-1 of the Code of Virginia, unless the facility has established and implemented a written policy explicitly prohibiting the participation of residents as subjects of human research as defined by the above statute. A facility which utilizes residents as subjects in human research shall document appropriate approval of each research project. A facility which does not utilize residents as subjects in human research shall have a written policy stating that residents will not be utilized.~~

Article 10. Residents' Records.

§ 2.26. A separate case record on each resident shall be maintained and shall include all correspondence relating to the care of that resident.

§ 2.27. Each case record shall be kept up to date and in a uniform manner.

§ 2.28. Case records shall be maintained in such manner as to be accessible to staff for use in working with the resident.

Proposed Regulations

Article 11.

Confidentiality of Residents' Records.

§ 2.29. The facility shall make information available only to those legally authorized to have access to that information under federal and state laws.

§ 2.30. There shall be written policy and procedures to protect the confidentiality of records which govern acquiring information, access, duplication, and dissemination of any portion of the records. The policy shall specify what information is available to the resident.

Article 12.

Storage of Confidential Records.

§ 2.31. Records shall be kept in areas which are accessible only to authorized staff.

§ 2.32. Records shall be stored in a metal file cabinet or other metal compartment.

§ 2.33. When not in use, records shall be kept in a locked compartment or in a locked room.

Article 13.

Disposition of Residents' Records.

§ 2.34. Residents' records shall be kept in their entirety for a minimum of three years after the date of the discharge unless otherwise specified by state or federal requirements.

§ 2.35. Permanent information shall be kept on each resident even after the disposition of the resident's record unless otherwise specified by state or federal requirements. Such information shall include:

1. Resident's name;
2. Date and place of resident's birth;
3. Dates of admission and discharge;
4. Names and addresses of parents and siblings; and
5. Name and address of legal guardian.

§ 2.36. Each facility shall have a written policy to provide for the disposition of records in the event the facility ceases operation.

Article 14.

Residential Facilities for Children Serving Persons Over the Age of 17 Years.

§ 2.37. Residential facilities for children subject to Interdepartmental licensure/certification which are also approved to maintain in care persons over 17 years of age, shall comply with the requirements of the Interdepartmental Standards for the care of all residents,

regardless of age, except that residential programs serving persons over 17 years of age, shall be exempt from this requirement when it is determined by the ~~licensing/certification~~ regulatory authority(ies) that the housing, staff and programming for such persons is maintained separately from the housing, staff and programming for the residents.

PART III. PERSONNEL.

Article 1.

Health Information.

§ 3.1. Health information required by these standards shall be maintained for the chief administrative officer, for all staff members who come in contact with residents or handle food, and for any individual who resides in a building occupied by residents including any such persons who are neither staff members nor residents of the facility.

Article 2.

Initial Tuberculosis Examination and Report.

§ 3.2. Within 30 days of employment or contact with residents each individual shall obtain an evaluation indicating the absence of tuberculosis in a communicable form except that an evaluation shall not be required for an individual who (i) has separated from employment with a facility licensed/certified by the Commonwealth of Virginia, (ii) has a break in service of six months or less, and (iii) submits the original statement of tuberculosis screening.

§ 3.3. Each individual shall submit a statement that he is free of tuberculosis in a communicable form including the type(s) of test(s) used and the test result(s).

§ 3.4. The statement shall be signed by licensed physician the physician's designee, or an official of a local health department.

§ 3.5. The statement shall be filed in the individual's record.

Article 3.

Subsequent Evaluations for Tuberculosis.

§ 3.6. Any individual who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms of four weeks duration or longer shall, within 30 days of exposure/development, receive an evaluation in accord with Part III, Article 2.

Article 4.

Physical or Mental Health of Personnel.

§ 3.7. At the request of the licensee/administrator of the facility or the ~~licensing~~ regulatory authority a report of examination by a licensed physician shall be obtained

Proposed Regulations

when there are indications that the care of residents may be jeopardized by the physical, mental, or emotional health of a specific individual.

§ 3.8. Any individual who, upon examination by a licensed physician or as result of tests, shows indication of a physical or mental condition which may jeopardize the safety of residents or which would prevent the performance of duties:

1. Shall immediately be removed from contact with residents and food served to residents ; and
2. Shall not be allowed contact with residents or food served to residents until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

Article 5. Qualifications.

§ 3.9. Standards in Part III, Articles 12-14 establishing minimum position qualifications shall be applicable to all facilities. In lieu of these minimum position qualifications, (i) facilities subject to the rules and regulations of the Virginia Department of Personnel and Training, or (ii) facilities subject to the rules and regulations of a local government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel authority.

§ 3.10. Any person who assumes or is designated to assume the responsibilities of a staff position or any combination of staff positions described in these standards shall meet the qualifications of that position(s) and shall fully comply with all applicable standards for each function.

§ 3.11. When services or consultations are obtained on a contract basis they shall be provided by professionally qualified personnel.

Article 6. Job Descriptions.

§ 3.12. For each staff position there shall be a written job description which, at a minimum, shall include:

1. The job title;
2. The duties and responsibilities of the incumbent;
3. The job title of the immediate supervisor; and
4. The minimum knowledge, skills and abilities required for entry level performance of the job.

§ 3.13. A copy of the job description shall be given to each person assigned to that position at the time of employment or assignment.

Article 7.

Written Personnel Policies and Procedures.

§ 3.14. The licensee shall approve written personnel policies.

§ 3.15. The licensee shall make its written personnel policies readily accessible to each staff member.

§ 3.16. The facility shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each staff position possess the knowledge, skills and abilities specified in the job description for that staff position.

§ 3.17. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include:

1. Acceptable methods for management of resident behavior;
2. Procedures for handling accusations against staff; and
3. Procedures for promptly referring suspected cases of child abuse and neglect to the local protective service unit and for cooperating with the unit during any investigation. (See § 5.143)

§ 3.18. Each staff member shall demonstrate a working knowledge of those policies and procedures that are applicable to his specific staff position.

Article 8. Personnel Records.

§ 3.19. A separate up-to-date personnel record shall be maintained for each staff member. The record shall include:

1. A completed employment application form or other written material providing:
 - a. Identifying information (name, address, phone number, social security number, and any names previously utilized);
 - b. Educational history; and
 - c. Employment history.
2. Written references or notations of oral references;
3. Reports of required health examinations;
4. Annual performance evaluations; and
5. Documentation of staff development activities.

§ 3.20. Each personnel record shall be retained in its

Proposed Regulations

entirety for two years after employment ceases.

§ 3.21. Information sufficient to respond to reference requests on separated employees shall be permanently maintained. Information shall minimally include name, social security number, dates of employment, and position(s) held.

Article 9. Staff Development.

§ 3.22. New employees, relief staff, volunteers and students, within one calendar month of employment, shall be given orientation and training regarding the objectives and philosophy of the facility, practices of confidentiality, other policies and procedures that are applicable to their specific positions, and their specific duties and responsibilities.

§ 3.23. Provision shall be made for staff development activities, designed to update staff on items in § 3.22 and to enable them to perform their job responsibilities adequately. Such staff development activities include, but shall not necessarily be limited to, supervision and formal training.

§ 3.24. Regular supervision of staff shall be provided.

§ 3.25. Regular supervision of staff shall not be the only method of staff development.

§ 3.26. Participation of staff, volunteers and students in orientation, training and staff development activities shall be documented.

Article 10. Staff Supervision of Children.

§ 3.27. No member of the child care staff shall be on duty more than six consecutive days between rest days except in an emergency except:

1. A child care staff member may attend training FOLLOWING WORKING AT THE FACILITY without a rest day. However, the staff member shall not work more than 10 consecutive days between rest days including working at the facility and training.
2. A child care staff member may accompany an excursion FOLLOWING WORKING AT THE FACILITY without a rest day. However, the staff member shall not work more than 14 consecutive days between rest days including working at the facility and the excursion.
3. A child care staff member accompanying an excursion shall not work at the facility for more than two consecutive days PRIOR TO THE EXCURSION.
4. A child care staff member may return to work at the facility without a rest day AFTER

ACCOMPANYING AN EXCURSION OR ATTENDING TRAINING. However, a staff member who returns to work at the facility shall not work more than six consecutive days between rest days including excursion and training days.

§ 3.28. Child care staff shall have an average of not less than two rest days per week in any four-week period. This shall be in addition to vacation time and holidays.

§ 3.29. Child care staff other than live in staff shall not be on duty more than 16 consecutive hours except in an emergency.

§ 3.30. There shall be at least one responsible adult on the premises and on duty at all times that one or more children are present.

§ 3.31. Each facility shall develop and implement written policies and procedures which address deployment of staff and supervision of children. The number of children being supervised may vary among staff members except that the total number of child care staff on duty shall not be less than the minimum number required by §§ 3.33 and 3.34 to supervise the total number of children on the premises and participating in off campus, facility sponsored activities.

§ 3.32. Written policies and procedures governing deployment of staff shall be reviewed and approved by the regulatory authority prior to implementation.

§ 3.33. During the hours that children normally are awake there shall be no less than one child care staff member awake, on duty and responsible for supervision of every 10 children, or portion thereof, on the premises or participating in off campus, facility sponsored activities except that:

1. In approved independent living programs, there shall be one child care staff member awake, on duty and responsible for supervision of every 15 children on the premises or participating in off campus, facility sponsored activities;
2. For children under four years of age, there shall be one child care staff member awake, on duty and responsible for supervision of every three children who are on the premises or participating in off campus, facility sponsored activities except that this requirement shall not apply to severely, multihandicapped, nonambulatory children; and
3. For severely multihandicapped, nonambulatory children under four years of age, there shall be one child care staff member awake, on duty and responsible for supervision of every six children.

§ 3.34. Supervision during sleeping hours.

- A. During the hours that residents normally are sleeping

there shall be no less than one child care staff member on duty and responsible for supervision of every 16 children, or portion thereof, on the premises.

B. There shall be at least one child care staff member awake and on duty:

1. In each building where 30 or more children are sleeping,
2. On each floor where 30 or more children are sleeping, and
3. On each major wing of each floor where 30 or more children are sleeping.

§ 3.35. Emergency telephone numbers.

A. When residents are away from the facility they and the adults responsible for their care during that absence shall be furnished with a telephone number where a responsible facility staff member or other responsible adult may be reached at all times except that this requirement shall not apply to secure detention facilities.

B. When children are on the premises of the facility, the staff on duty shall be furnished with a telephone number where the administrator or his designee may be reached at all times.

§ 3.36. Children shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This requirement shall not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to children whose physical or mental disabilities dictate the need for assistance with these activities as justified in the client's record.

§ 3.37. Searches.

A. If a facility conducts pat downs it shall develop and implement written policies and procedures governing them. A facility that does not conduct pat downs shall have a written policy prohibiting them.

B. Written policies and procedures governing pat downs shall be reviewed and approved by the regulatory authority prior to implementation.

C. Written policies and procedures governing pat downs shall include:

1. A requirement that pat downs be limited to instances where they are necessary to prohibit contraband;
2. A listing of the specific circumstances when pat downs are permitted;

3. A statement that pat downs shall be conducted only in the specific circumstances enumerated in the written policies and procedures;

4. A requirement that pat downs be conducted by personnel of the same gender as the client(s) being searched;

5. A listing of the personnel authorized to conduct pat downs;

6. A statement that pat downs shall be conducted only by personnel authorized to conduct searches by the written policies and procedures;

7. A requirement that witnesses, if any, be of the same gender as the client(s) being searched; and

8. Provisions to ensure the client's privacy.

D. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations, or
2. As ordered by a court of competent jurisdiction.

Article 11. The Chief Administrative Officer.

§ 3.38. The chief administrative officer shall be responsible to the governing body for:

1. The overall administration of the program;
2. Implementation of all policies;
3. Maintenance of the physical plant; and
4. Fiscal management of the residential facility for children.

§ 3.39. Duties of the chief administrative officer may be delegated to qualified subordinate staff.

§ 3.40. Duties delegated by the chief administrative officer shall be reflected in the job description of the position assigned each delegated function.

§ 3.41. A qualified staff member shall be designated to assume responsibility for the operation of the facility in the absence of the chief administrative officer.

Article 12. The Program Director.

§ 3.42. The program director shall be responsible for the development and implementation of the programs and services (See Part V) offered by the residential facility for children.

Proposed Regulations

§ 3.43. A program director appointed after July 1, 1981, shall have:

1. A baccalaureate degree from an accredited college or university with two years of successful work experience with children in the field of institutional management, social work, education or other allied profession; or
2. A graduate degree from an accredited college or university in a profession related to child care and development; or
3. A license or certification in the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism.

§ 3.44. Any qualified staff member, including the chief administrative officer, may serve as the program director.

§ 3.45. When a facility is licensed/certified to care for 13 or more residents, a full-time, qualified staff member shall fulfill the duties of the program director.

Article 13. Child and Family Service Worker(s).

§ 3.46. If not provided by external resources in accord with § 5.45, counseling and social services (see § 5.43), shall be provided by a staff member(s) qualified to provide such services.

§ 3.47. If employment begins after July 1, 1981, the Child and Family Service Worker shall have:

1. A graduate degree in social work, psychology, counseling or a field related to family services or child care and development; or
2. A baccalaureate degree and two years of successful experience in social work, psychology, counseling or a field related to family services or child care and development (In lieu of two years of experience, the person may work under the direct supervision of a qualified supervisor for a period of two years); or
3. A license or certificate in the Commonwealth of Virginia to render services as a drug abuse or alcoholism counselor/worker only in facilities which are certified to provide drug abuse or alcoholism counseling; or
4. A license or certificate when required by law issued in the Commonwealth of Virginia to render services in the field of:

a. Social Work, or

b. Psychology, or

c. Counseling (individual, group or family).

Article 14. Child Care Staff.

§ 3.48. In each child care unit a designated staff member shall have responsibility for the development of the daily living program within the child care unit.

§ 3.49. A designated staff member shall be responsible for the coordination of all services offered to each resident.

§ 3.50. A designated staff member(s) shall have responsibility for the orientation, training and supervision of child care workers.

§ 3.51. An individual employed after July 1, 1981, to supervise child care staff shall have:

1. A baccalaureate degree from an accredited college or university and two years experience in the human services field, at least one of which shall have been in a residential facility for children; or
2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years experience in the human service field with at least two years in a residential facility for children.

§ 3.52. The child care worker shall have direct responsibility for guidance and supervision of the children to whom he is assigned. This shall include:

1. Overseeing physical care;
2. Development of acceptable habits and attitudes;
3. Management of resident behavior ; and
4. Helping to meet the goals and objectives of any required service plan.

§ 3.53. A child care worker shall be no less than 18 years of age.

§ 3.54. A child care worker shall:

1. Be a high school graduate or have a General Education Development Certificate (G.E.D.) except that individuals employed prior to the effective date of these standards shall meet this requirement by July 1, 1986; and
2. Have demonstrated, through previous life and work experiences, an ability to maintain a stable environment and to provide guidance to children in the age range for which the child care worker will be responsible.

Article 15. Relief Staff.

§ 3.55. Sufficient qualified relief staff shall be employed to maintain required staff/child ratios during:

1. Regularly scheduled time off of permanent staff, and
2. Unscheduled absences of permanent staff.

Article 16. Medical Staff.

§ 3.56. Services of a licensed physician shall be available for treatment of residents as needed.

§ 3.57. Any nurse employed shall hold a current nursing license issued by the Commonwealth of Virginia.

§ 3.58. At all times that children are present there shall be at least one responsible adult on the premises who has received within the past three years a basic certificate in standard first-aid (Multi-Media, Personal Safety, or Standard First Aid Modular) issued by the American Red Cross or other recognized authority except that this requirement does not apply during those hours when a licensed nurse is present at the facility.

§ 3.59. At all times that children are present there shall be at least one responsible adult on the premises who has received a certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

Article 17. Recreation Staff.

§ 3.60. There shall be designated staff responsible for organized recreation who shall have:

1. Experience in working with and providing supervision to groups of children with varied recreational needs and interests;
2. A variety of skills in group activities;
3. A knowledge of community recreational facilities; and
4. An ability to motivate children to participate in constructive activities.

Article 18. Volunteers and Students Receiving Professional Training.

§ 3.61. If a facility uses volunteers or students receiving professional training it shall develop written policies and procedures governing their selection and use. A facility that does not use volunteers shall have a written policy stating that volunteers will not be utilized.

§ 3.62. The facility shall not be dependent upon the use of

volunteers/students to ensure provision of basic services.

§ 3.63. The selection of volunteers/students and their orientation, training, scheduling, supervision and evaluation shall be the responsibility of designated staff members.

§ 3.64. Responsibilities of volunteers/students shall be clearly defined.

§ 3.65. All volunteers/students shall have qualifications appropriate to the services they render based on experience or orientation.

§ 3.66. Volunteers/students shall be subject to all regulations governing confidential treatment of personal information.

§ 3.67. Volunteers/students shall be informed regarding liability and protection.

Article 19. Support Functions.

§ 3.68. Facilities shall provide for support functions including, but not limited to, food service, maintenance of buildings and grounds, and housekeeping.

§ 3.69. All food handlers shall comply with applicable State Health Department regulations and with any locally adopted health ordinances.

§ 3.70. Child care workers and other staff may assume the duties of service personnel only when these duties do not interfere with their responsibilities for child care.

§ 3.71. Residents shall not be solely responsible for support functions.

PART IV. RESIDENTIAL ENVIRONMENT.

Article 1. Location.

§ 4.1. A residential facility for children shall be located so that it is reasonably accessible to schools, transportation, medical and psychiatric resources, churches, and recreational and cultural facilities.

Article 2. Buildings, Inspections and Building Plans.

§ 4.2. All buildings and installed equipment shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed/certified purposes.

§ 4.3. At the time of the original application and at least annually thereafter the buildings shall be inspected and

Proposed Regulations

approved by:

1. State fire officials or local fire authorities, as applicable, whose inspection shall determine compliance with the "Virginia Statewide Fire Prevention Code"; and

2. State or local health authorities, whose inspection and approval shall include:

- a. General sanitation;
- b. The sewage disposal system;
- c. The water supply;
- d. Food service operations; and
- e. Swimming pools.

§ 4.4. The buildings shall be suitable to house the programs and services provided.

Article 3.

Plans and Specifications for New Buildings and Additions, Conversions, and Structural Modifications to Existing Buildings.

§ 4.5. Building plans and specifications for new construction, conversion of existing buildings, and any structural modifications or additions to existing ~~licensed~~ *licensed/certified* buildings shall be submitted to and approved by the ~~licensing/certification~~ *regulatory* authority and the following authorities, where applicable, before construction begins:

1. Local building officials;
2. Local fire departments;
3. Local or state health departments; and
4. Office of the State Fire Marshal.

§ 4.6. Documentation of the approvals required by § 4.5 shall be submitted to the ~~licensing~~ *regulatory* authority(ies).

Article 4.

Heating Systems, Ventilation and Cooling Systems.

§ 4.7. Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 65°F is maintained, unless otherwise mandated by state or federal authorities.

§ 4.8. Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents.

§ 4.9. All doors and windows capable of being used for ventilation shall be fully screened unless screening

particular doors and windows is explicitly prohibited in writing by state or local fire authorities and those doors and windows are not used for ventilation.

§ 4.10. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 85°F.

Article 5.

Lighting.

§ 4.11. Artificial lighting shall be by electricity.

§ 4.12. All areas within buildings shall be lighted for safety.

§ 4.13. Night lights shall be provided in halls and bathrooms.

§ 4.14. Lighting shall be sufficient for the activities being performed in a specific area.

§ 4.15. Operable flashlights or battery lanterns shall be available for each staff member on the premises between dusk and dawn for use in emergencies.

§ 4.16. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

Article 6.

Plumbing and Toilet Facilities.

§ 4.17. All plumbing shall be maintained in good operational condition.

§ 4.18. There shall be an adequate supply of hot and cold running water available at all times.

§ 4.19. Precautions shall be taken to prevent scalding from running water. In all newly constructed or renovated facilities mixing faucets shall be installed.

§ 4.20. There shall be at least one toilet, one hand basin and one shower or bathtub in each living unit, and there shall be at least one bathroom equipped with a bathtub in each facility.

§ 4.21. There shall be at least one toilet, one hand basin and one shower or tub for every eight residents.

§ 4.22. In any facility constructed or reconstructed after July 1, 1981, except secure detention facilities there shall be one toilet, one hand basin and one shower or tub for every four residents.

§ 4.23. When a separate bathroom is not provided for staff on duty less than 24 hours, the maximum number of staff members on duty in the living unit at any one time shall be counted in the determination of the number of toilets and hand basins.

§ 4.24. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located except in security rooms in hospitals, secure detention facilities and learning centers.

§ 4.25. At all times an adequate supply of personal necessities shall be available to the residents for purposes of personal hygiene and grooming; such as, but not limited to, soap, toilet tissue, toothpaste, individual tooth brushes, individual combs and shaving equipment.

§ 4.26. Clean, individual washclothes and towels shall be available once each week or more often if needed.

Article 7. Facilities and Equipment for Residents with Special Toileting Needs.

§ 4.27. When residents are in care who are not toilet trained:

1. Provision shall be made for sponging, diapering and other similar care on a nonabsorbent changing surface which shall be cleaned with warm soapy water after each use.
2. A covered diaper pail, or its equivalent, with leakproof disposable liners shall be available. If both cloth and disposable diapers are used there shall be a diaper pail for each.
3. Adapter seats and toilet chairs shall be cleaned with warm soapy water immediately after each use.
4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting an individual child or themselves with toileting.

Article 8. Sleeping Areas.

§ 4.28. When residents are four years of age or older, boys shall have separate sleeping areas from girls.

§ 4.29. No more than four children may share a bedroom or sleeping area.

§ 4.30. When a facility is not subject to the Virginia Public Building Safety Regulations or the Uniform Statewide Building Code, children who are dependent upon wheelchairs, crutches, canes or other mechanical devices for assistance in walking shall be assigned sleeping quarters on ground level and provided with a planned means of effective egress for use in emergencies.

§ 4.31. There shall be sufficient space for beds to be at least three feet apart at the head, foot and sides and five feet apart at the head, foot and sides for double-decker beds.

§ 4.32. In facilities previously licensed by the Department of Social Services and in facilities established, constructed or reconstructed after July 1, 1981, sleeping quarters shall meet the following space requirements:

1. There shall be not less than 450 cubic feet of air space per person;
2. There shall be not less than 80 square feet of floor area in a bedroom accommodating only one person;
3. There shall be not less than 60 square feet of floor area per person in rooms accommodating two or more persons; and
4. All ceilings shall be at least 7-1/2 feet in height.

§ 4.33. Each child shall have a separate, clean, comfortable bed equipped with mattress, pillow, blanket(s), bed linens, and, if needed, a waterproof mattress cover.

§ 4.34. Bed linens shall be changed at least every seven days or more often, if needed.

§ 4.35. Mattresses and pillows shall be clean and those placed in service after July 1, 1981, shall also be fire retardant as evidenced by documentation from the manufacturer.

§ 4.36. Cribs shall be provided for residents under two years of age.

§ 4.37. Each resident shall be assigned drawer space and closet space, or their equivalent, accessible to the sleeping area for storage of clothing and personal belongings.

§ 4.38. The sleeping area environment shall be conducive to sleep and rest.

§ 4.39. Smoking by any person shall be prohibited in sleeping areas.

Article 9. Privacy for Residents.

§ 4.40. Where bathrooms are not designated for individual use, each toilet shall be enclosed for privacy except in secure detention facilities.

§ 4.41. Where bathrooms are not designated for individual use, bathtubs and showers, except in secure detention facilities, shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

§ 4.42. Windows in bathrooms shall provide for privacy.

§ 4.43. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily openable in case of fire or other emergency.

§ 4.44. Windows in sleeping and dressing areas shall

Proposed Regulations

provide for privacy.

Article 10. Living Rooms/Indoor Recreation Space.

§ 4.45. Each living unit shall contain a living room or an area for informal use for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is age appropriate.

§ 4.46. In facilities licensed to care for more than 12 residents there shall be indoor recreational space that contains recreational equipment appropriate to the ages and interests of the residents. Such indoor recreational space shall be distinct from the living room in each living unit required by § 4.45, but such space shall not be required in every living unit.

Article 11. Study Space.

§ 4.47. Study space shall be provided in facilities serving a school age population and may be assigned in areas used interchangeably for other purposes.

§ 4.48. Study space shall be well lighted, quiet, and equipped with at least tables or desks and chairs.

Article 12. Kitchen and Dining Areas.

§ 4.49. Meals shall be served in areas equipped with sturdy tables and benches or chairs of a size appropriate for the sizes and ages of the residents.

§ 4.50. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

§ 4.51. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

Article 13. Laundry Areas.

§ 4.52. If laundry is done at the facility, appropriate space and equipment in good repair shall be provided.

Article 14. Storage.

§ 4.53. Space shall be provided for safe storage of items such as first-aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

Article 15. Staff Quarters.

§ 4.54. A separate (private) bathroom and bedroom shall be provided for staff and their families when staff are required to be in the living unit for 24-hours or more

except, that when there are no more than four persons, including staff and family of staff, residing in, or on duty, in the living unit, a private bathroom is not required for staff.

§ 4.55. Off duty staff and members of their families shall not share bedrooms with residents.

§ 4.56. When 13 or more residents reside in one living unit a separate (private) living room shall be provided for child care staff who are required to be in the living unit for 24 hours or more.

§ 4.57. When child care staff are on duty for less than 24 hours, a bed shall be provided for use of each staff member on duty during night hours unless such staff member is required to remain awake.

Article 16. Office Space.

§ 4.58. Space shall be provided for administrative activities including provision for storage of records and materials (See Part II, Article 12).

Article 17. Buildings and Grounds.

§ 4.59. Buildings and grounds, including roads, pavements, parking lots, stairways, railings and other potentially hazardous areas, shall be safe, properly maintained and free of clutter and rubbish.

§ 4.60. There shall be outdoor recreational space appropriately equipped for the residents.

Article 18. Equipment and Furnishings.

§ 4.61. All furnishings and equipment shall be safe, easy to clean, and suitable to the ages and number of residents.

§ 4.62. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

§ 4.63. The facility shall have a written policy governing the possession and use of firearms, pellet guns, air rifles and other weapons on the premises of the facility that shall provide that no firearms, pellet guns, air rifles, or other weapons, shall be permitted on the premises of the facility unless they are:

1. In the possession of licensed security personnel; or
2. Kept under lock and key; or
3. Used under the supervision of a responsible adult in accord with policies and procedures developed by the facility for their lawful and safe use.

Article 19. Housekeeping and Maintenance.

§ 4.64. The interior and exterior of all buildings, including required locks and mechanical devices, shall be maintained in good repair.

§ 4.65. The interior and exterior of all buildings shall be kept clean and free of rubbish.

§ 4.66. All buildings shall be well-ventilated and free of stale, musty or foul odors.

§ 4.67. Adequate provisions shall be made for the collection and legal disposal of garbage and waste materials.

§ 4.68. Buildings shall be kept free of flies, roaches, rats and other vermin.

§ 4.69. All furnishings, linens, and indoor and outdoor equipment shall be kept clean and in good repair.

§ 4.70. A sanitizing agent shall be used in the laundering of bed, bath, table and kitchen linens.

§ 4.71. Lead based paint shall not be used on any surfaces and items with which residents and staff come in contact.

Article 20. Farm and Domestic Animals.

§ 4.72. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating, and food preparation areas.

§ 4.73. Stables and corrals shall be located so as to prevent contamination of any water supply.

§ 4.74. Manure shall be removed from stalls and corrals as often as necessary to prevent a fly problem.

§ 4.75. All animals maintained on the premises shall be tested, inoculated and licensed as required by law.

§ 4.76. The premises shall be kept free of stray domestic animals.

§ 4.77. Dogs and other small animal pets and their quarters shall be kept clean.

Article 21. Primitive Campsites.

§ 4.78. The standards in Article 21 through Article 28 are applicable exclusively to the residential environment and equipment at primitive campsites. Permanent buildings and other aspects of the residential environment at a wilderness camp shall comply with the remaining standards in Part IV.

§ 4.79. All campsites shall be well drained and free from depressions in which water may stand.

§ 4.80. Natural sink-holes and other surface collectors of water shall be either drained or filled to prevent the breeding of mosquitoes.

§ 4.81. Campsites shall not be in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or other hazards.

§ 4.82. The campsite shall be free from debris, noxious plants, and uncontrolled weeds or brush.

Article 22. Water in Primitive Campsites.

§ 4.83. Drinking water used at primitive campsites and on hikes away from permanent campsites shall be from a source known to be safe (free of coliform organisms) or shall be rendered safe before use in a manner approved by the Virginia Department of Health.

§ 4.84. An adequate supply of water, under pressure where possible, shall be provided at the cooking area for handwashing, dishwashing, food preparation and drinking.

Article 23. Food Service Sanitation in Primitive Campsites.

§ 4.85. Food shall be obtained from approved sources and shall be properly identified.

§ 4.86. Milk products shall be pasteurized.

§ 4.87. Food and drink shall be maintained and stored so as to prevent contamination and spoilage.

§ 4.88. The handling of food shall be minimized through the use of utensils.

§ 4.89. Fruits and vegetables shall be properly washed prior to use.

§ 4.90. Food and food containers shall be covered and stored off the ground and on clean surfaces. Refrigerated food shall also be covered.

§ 4.91. Sugar and other condiments shall be packaged or served in closed dispensers.

§ 4.92. Poisonous and toxic materials shall be properly used, properly identified and stored separately from food.

§ 4.93. Persons with wounds or communicable diseases shall be prohibited from handling food.

§ 4.94. Persons who handle food and eating utensils for the group shall maintain personal cleanliness, shall keep hands clean at all times, and shall thoroughly wash their hands with soap and water after each visit to the toilet.

Proposed Regulations

§ 4.95. Food contact surfaces shall be kept clean.

§ 4.96. All eating utensils and cookware shall be properly stored.

§ 4.97. Disposable or single use dishes, receptacles and utensils shall be properly stored, handled and used only once.

§ 4.98. Eating utensils shall not be stored with food or other materials and substances.

§ 4.99. The use of a common drinking cup shall not be permitted.

§ 4.100. Only food which can be maintained in a wholesome condition with the equipment available shall be used at primitive camps.

§ 4.101. Ice which comes in contact with food or drink shall be obtained from an approved source and shall be made, delivered, stored, handled, and dispensed in a sanitary manner and be free from contamination.

§ 4.102. When ice and ice chests are used, meats and other perishable foods shall not be stored for more than 24 hours.

§ 4.103. Eating utensils and cookware shall be washed and sanitized after each use.

§ 4.104. No dish, receptacle or utensil used in handling food for human consumption shall be used or kept for use if chipped, cracked, broken, damaged or constructed in such a manner as to prevent proper cleaning and sanitizing, disposed of at an approved sanitary landfill or similar disposal facility. Where such facilities are not available, solid wastes shall be disposed of daily by burial under at least two feet of compacted earth cover in a location which is not subject to inundation by flooding.

Article 24.

Toilet Facilities in Primitive Campsites.

§ 4.106. Where a water supply is not available sanitary type privies or portable toilets shall be provided. All such facilities shall be constructed as required by the Virginia Department of Health.

§ 4.107. All facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner to eliminate possible health or pollution hazards, to prevent access of flies and animals to their contents, and to prevent fly breeding.

§ 4.108. Privies shall be located at least 150 feet from a stream, lake or well and at least 75 feet from a sleeping or housing facility.

§ 4.109. Primitive campsites which are not provided with approved permanent toilet facilities shall have a minimum

ratio of one toilet seat for every 15 persons.

§ 4.110. If chemical control is used to supplement good sanitation practices, proper pesticides and other chemicals shall be used safely and in strict accordance with label instructions.

Article 25.

Heating in Primitive Campsites.

§ 4.111. All living quarters and service structures at primitive campsites shall be provided with properly installed, operable, heating equipment.

§ 4.112. No portable heaters other than those operated by electricity shall be used.

§ 4.113. Any stoves or other sources of heat utilizing combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases.

§ 4.114. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, installed metal sheet, or other fireproof materials on the floor under each stove and extending at least 18 inches beyond the perimeter of the base of the stove.

§ 4.115. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stove-pipe shall be of fireproof material.

§ 4.116. A vented metal collar or other insulating device shall be installed around a stove pipe or vent passing through a wall, ceiling, floor or roof to prevent melting or combustion.

§ 4.117. A vented collar, insulating device, or chimney shall extend above the peak of the roof or otherwise be constructed in a manner which allows full draft of smoke.

§ 4.118. When a heating system has automatic controls the controls shall be of the type which will cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 4.119. All heating equipment shall be maintained and operated in a safe manner to prevent the possibility of fire.

Article 26.

Sleeping Areas and Equipment in Primitive Campsites.

§ 4.120. Bedding shall be clean, dry, and sanitary.

§ 4.121. Bedding shall be adequate to ensure protection and comfort in cold weather.

§ 4.122. If used, sleeping bags shall be fiberfill and rated

for O°F.

§ 4.123. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

§ 4.124. Bedwetters shall have their bedding changed or dried as often as it is wet.

§ 4.125. If mattresses are used they shall be clean.

§ 4.126. Mattresses placed in service after July 1, 1981, shall be fire retardant as evidenced by documentation from the manufacturer.

§ 4.127. A mattress cover shall be provided for each mattress.

§ 4.128. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitos.

§ 4.129. A separate bed, bunk, or cot shall be made available for each person.

Article 27.

Clothing in Primitive Campsites.

§ 4.130. Each resident shall be provided with an adequate supply of clean clothing suitable for outdoor living appropriate to the geographic location and season.

§ 4.131. Sturdy, water-resistant, outdoor shoes or boots shall be provided for each resident.

§ 4.132. An adequate personal storage area shall be available for each resident.

Article 28.

Fire Prevention in Primitive Campsites.

§ 4.133. With the consultation and approval of the local fire authority a written fire plan shall be established indicating the campsite's fire detection system, fire alarm and evacuation procedures.

§ 4.134. The fire plan shall be implemented through the conduct of fire drills at the campsite at least once each month.

§ 4.135. A record of all fire drills shall be maintained.

§ 4.136. The record for each fire drill shall be retained two years subsequent to the drill.

§ 4.137. An approved 2A 10BC fire extinguisher in operable condition shall be maintained immediately adjacent to the kitchen or food preparation area.

§ 4.138. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type

heating devices, campfires, or other combustion at the primitive campsite.

PART V.

PROGRAMS AND SERVICES.

Article 1.

Criteria for Admission.

§ 5.1. Each residential facility for children except secure detention facilities shall have written criteria for admission that shall be made available to all parties when placement for a child is being considered. Such criteria shall include:

1. A description of the population to be served;
2. A description of the types of services offered; and
3. Intake and admission procedures including necessary referral documentation.

§ 5.2. No child with special needs shall be accepted for placement by a facility unless that facility has a program appropriate to meet those needs or arrangements are made for meeting those needs through community resources unless the child's admission is required by court order.

§ 5.3. The facility shall accept and maintain only those children whose needs are compatible with those services provided through the facility unless a child's admission is required by court order.

§ 5.4. A facility shall not knowingly accept into care a child whose health or behavior shall present a clear and present danger to the child or others residing in the facility unless the facility is licensed or certified to provide such care or a child's admission is required by court order. (See requirements for certification or special licensure.)

Article 2.

Admission of Blind or Visually Impaired Children.

§ 5.5. When a blind or visually impaired child is admitted to a residential facility for children, the facility shall obtain the services of the staff of the Virginia Department for the Visually Handicapped as consultants for assessment, program planning and prescribed teaching (if not previously obtained).

§ 5.6. Provision of the services of the Department for the Visually Handicapped shall be documented in the resident's record.

§ 5.7. If the services of the Department for the Visually Handicapped are not obtained the resident's placement shall be considered inappropriate.

Article 3.

Interstate Compact on the Placement of Children.

Proposed Regulations

§ 5.8. No child shall be accepted for placement from outside of the Commonwealth of Virginia without the prior approval of the administrator of the Interstate Compact on the Placement of Children, Virginia Department of Social Services, except that this section shall not apply when the Interstate Compact Relating to Juveniles applies.

§ 5.9. Documentation of approval of the compact administrator shall be retained in the resident's record.

Article 4. Documented Study of the Child.

§ 5.10. Acceptance for care, other than emergency or diagnostic care, shall be based on an evaluation of a documented study of the child except that the requirements of this article shall not apply (i) to temporary care facilities, or (ii) to secure detention facilities.

§ 5.11. If a facility is specifically approved to provide residential respite care, the acceptance by the facility of a child as eligible for respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

§ 5.12. In facilities required to base their acceptance for care on a documented study of the child, at the time of a routine admission or 30 days after an emergency admission each resident's record shall contain all of the elements of the documented study.

§ 5.13. The documented study of the child shall include all of the following elements (When information on the child is not available, the reason shall be documented in the resident's record):

1. A formal request or written application for admission;
2. Identifying information documented on a face sheet (see § 5.14);
3. Physical examination as specified in § 5.59;
4. Medical history (see § 5.15);
5. A statement, such as a report card, concerning the resident's recent scholastic performance, including a current Individual Education Plan (IEP), if applicable;
6. Results of any psychiatric or psychological evaluations of the resident, if applicable;
7. Social and developmental summary (see § 5.16);
8. Reason for referral; and
9. Rationale for acceptance.

§ 5.14. Identifying information on a face sheet shall

include:

1. Full name of resident;
2. Last known residence;
3. Birthdate;
4. Birthplace;
5. Sex of resident;
6. Racial and national background;
7. Resident's social security number;
8. Religious preference of resident or parents;
9. Custody status indicating name and address of legal guardian, if any;
10. Names, addresses and telephone numbers for emergency contacts, parents, legal guardians or representative of the child-placing agency, as applicable; and
11. Date of admission.

§ 5.15. A medical history shall include:

1. Serious illnesses and chronic conditions of the resident's parents and siblings, if known;
2. Past serious illnesses, infectious diseases, serious injuries, and hospitalizations of the resident;
3. Psychological, psychiatric and neurological examinations, if applicable;
4. Name, address and telephone number of resident's former physician(s), when information is available; and
5. Name, address and telephone number of resident's former dentist(s), when information is available.

§ 5.16. A social and developmental summary shall include:

1. Description of family structure and relationships;
2. Previous placement history;
3. Current behavioral functioning including strengths, talents, and problems;
4. Documentation of need for care apart from the family setting;
5. Names, address(es), Social Security numbers, and marital status of parents; and

6. Names, ages, and sex of siblings.

Article 5.
Preplacement Activities Documentation.

§ 5.17. At the time of the admission, except emergency admissions, involuntary admissions to security settings or admissions by court order the facility shall provide evidence of its cooperation with the placing agency in preparing the child and the family for the child's admission by documenting the following:

1. A preplacement visit by the resident accompanied by a family member, an agency representative or other responsible adult;
2. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the residents and activities; and
3. Written confirmation of the admission decision to the family or legal guardian and to the placing agency.

Article 6.
Authority to Accept Children.

§ 5.18. Children shall be accepted only by court order or by written placement agreement with legal guardians except that this requirement shall not apply to temporary care facilities when a voluntary admission is made according to Virginia law. (See Part V, Article 9)

Article 7.
Written Placement Agreement.

§ 5.19. At the time of admission the resident's record shall contain the written placement agreement from the individual or agency having custody or a copy of the court order, or both, authorizing the resident's placement.

§ 5.20. The written placement agreement shall:

1. Give consent for the resident's placement in the facility designating the name and physical location of the facility and the name of the resident;
2. Recognize the rights of each of the parties involved in the placement clearly defining areas of joint responsibility in order to support positive placement goals;
3. Include financial responsibility, where applicable;
4. Specify the arrangements and procedures for obtaining consent for necessary medical, dental and surgical treatment or hospitalization;
5. Address the matter of all absences from the facility and shall specify the requirements for notifying or obtaining approval of the party having legal

responsibility for the resident. If there are to be regular and routine overnight visits away from the facility without staff supervision the agreement must state that advance approval of the individual(s) or agency legally responsible for the resident is required.

Article 8.
Emergency Admissions.

§ 5.21. Facilities other than temporary care facilities or secure detention facilities receiving children under emergency circumstances shall meet the following requirements:

1. Have written policies and procedures governing such admissions; and
2. Place in each resident's record a written request for care or documentation of an oral request for care.

Article 9.
Temporary Care Facility.

§ 5.22. At the time of admission to a temporary care facility the following shall be documented in the child's record:

1. A written request for admission or documentation of an oral request for care;
2. If the facility is licensed pursuant to Chapter 10 of Title 63.1 of the Code of Virginia as a Child Caring Institution the facility shall obtain and document verbal approval for placement from the legal guardian within eight hours of the child's arrival at the facility and a written placement agreement shall be completed and signed by the legal guardian and facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival, whichever is later;
3. Identifying information documented on a face sheet which shall include:
 - a. Full name of resident,
 - b. Birthdate,
 - c. Sex of resident,
 - d. Racial/ethnic background,
 - e. Last known address,
 - f. Names and addresses of persons or agencies to contact in case of emergency,
 - g. Date of admission, and
 - h. Resident's social security number,

Proposed Regulations

4. The resident's health status including:
 - a. A statement of known and obvious illnesses and handicapping conditions;
 - b. A statement of medications currently being taken;
 - c. A statement of the resident's general health status; and
 - d. Name, address and telephone number of the resident's physician, if known; and
5. A statement describing the resident's need for immediate temporary care.

§ 5.23. When identifying information is not available the reason shall be documented on the face sheet.

Article 10. Discharge.

§ 5.24. If a facility is specifically approved to provide residential respite care a resident will be discharged when the resident and his legal guardians no longer intend to use the facility's services.

§ 5.25. All facilities, except for secure detention facilities, shall have written criteria for termination of care that shall include:

1. Criteria for a resident's completion of the program as described for compliance with § 2.5; and
2. Conditions under which a resident may be discharged before completing the program.

§ 5.26. Except when discharge is ordered by a court of competent jurisdiction prior to the planned discharge date each resident's record shall contain the following:

1. Documentation that the termination of care has been planned with the parent/ legal guardian/child-placing agency and with the resident; and
2. A written discharge plan and documentation that it was prepared and discussed with the resident, when appropriate, prior to the resident's discharge. The plan shall contain at least:
 - a. An assessment of the resident's continuing needs; and
 - b. A recommended plan for services in the resident's new environment.

§ 5.27. No later than 10 days after any discharge, except those from secure detention, the resident's record shall contain the following information:

1. Date of discharge;
2. Reason for discharge;
3. Documentation that the reason for discharge was discussed with the parent/ legal guardian/child-placing agency and, when appropriate, with the resident, except that this requirement does not apply to court ordered discharges;
4. Forwarding address of the resident, if known;
5. Name and address of legally responsible party to whom discharge was made; and
6. In cases of interstate placement documentation that the Administrator of the Interstate Compact on the Placement of Children was notified of the discharge.

§ 5.28. A comprehensive discharge summary shall be placed in the resident's record no later than 30 days after discharge except in a secure detention facility.

§ 5.29. A comprehensive discharge summary shall include:

1. Length of a resident's residence at the time of discharge;
2. The name of the resident's designated case coordinator, if assigned;
3. Information concerning new or currently prescribed medication including when and why it was prescribed, the dosage, and whether it is to be continued;
4. Summary of the resident's overall progress during placement;
5. Summary of family contacts during placement, if any; and
6. Reasons for discharge.

§ 5.30. Except in secure detention, residents shall be discharged only to the legally responsible party from whom they were accepted except (i) in cases where legal responsibility has been transferred to another person or agency during the period of the resident's stay in the facility or (ii) in cases where a resident committed pursuant to a court order is given a direct discharge by the agents of the appropriate State Board in accordance with law and policy.

Article 11. Placement of Residents Outside the Facility.

§ 5.31. Except in a secure detention facility the facility shall not place a resident away from the facility, including in staff residences regardless of location, without first having obtained a Child Placing Agency license from the Department of Social Services. Temporary absences for the

purposes of medical care, attendance at day school, or vacations shall not be deemed to be placements.

Article 12. Service Plan.

§ 5.32. A written individualized service plan, based on information derived from the documented study of the child and other assessments made by the facility, shall be developed for each resident, within 30 days of admission and placed in the resident's master file except that the requirements of this article do not apply (i) to secure detention facilities or (ii) to temporary care facilities.

§ 5.33. The following parties shall participate, unless clearly inappropriate, in developing the initial individualized service plan:

1. The resident;
2. The resident's family or legally authorized representative;
3. The placing agency; and
4. Facility staff.

§ 5.34. The degree of participation, or lack thereof, of each of the parties listed in § 5.33 in developing the service plan shall be documented in the resident's record.

§ 5.35. The individualized service plan shall include, but not necessarily be limited to, the following:

1. A statement of the resident's current level of functioning including strengths and weaknesses, and corresponding educational, residential and treatment/training needs;
2. A statement of goals and objectives meeting the above identified needs;
3. A statement of services to be rendered and frequency of services to accomplish the above goals and objectives;
4. A statement identifying the individual(s) or organization(s) that will provide the services specified in the statement of services;
5. A statement identifying the individual(s) delegated the responsibility for the overall coordination and integration of the services specified in the plan;
6. A statement of the timetable for the accomplishment of the resident's goals and objectives; and
7. The estimated length of the resident's stay.

Article 13.

Quarterly Progress Reports.

§ 5.36. For all facilities except secure detention facilities written progress summary reports completed at least every 90 days shall be included in each resident's record and shall include:

1. Reports of significant incidents, both positive and negative;
2. Reports of visits with the family;
3. Changes in the resident's family situation;
4. Progress made toward the goals and objectives described in the Service Plan required by § 5.32;
5. School reports;
6. Behavioral problems in the facility and the community;
7. Summary of the resident's social, emotional, and physical development during the previous three months including a listing of any specialized services and on-going medications prescribed;
8. Reevaluation of the placement including tentative discharge plans.

Article 14. Annual Service Plan Review.

§ 5.37. For all facilities except secure detention facilities at least annually the following parties shall participate, unless clearly inappropriate, in formally reviewing and rewriting the service plan based on the resident's current level of functioning and needs:

1. The resident;
2. The resident's family or legally authorized representative;
3. The placing agency; and
4. Facility staff.

§ 5.38. The degree of participation, or lack thereof, of each of the parties listed in § 5.37 in reviewing and rewriting the service plan shall be documented in the resident's record except that this section does not apply to secure detention facilities.

§ 5.39. Staff responsible for the daily implementation of the resident's individual service plan shall be represented on the staff team that evaluates adjustment and progress and makes plans for individual residents except that this section does not apply to secure detention facilities.

§ 5.40. Staff responsible for daily implementation of the

Proposed Regulations

resident's individualized service plan shall be able to describe resident behavior in terms of the objectives in the service plan except that this section does not apply to secure detention facilities.

Article 15.

Service Plan for Temporary Care Facilities.

§ 5.41. An individualized service plan including the elements required by § 5.42 shall be developed for each resident admitted to a temporary care facility and placed in the resident's master file within 72 hours of admission.

§ 5.42. The individualized service plan shall include:

1. The resident's description of his situation/problem;
2. Documentation of contact with the resident's parent or legal guardian to obtain his description of the resident's situation/problem;
3. The facility staff's assessment of the resident's situation/problem;
4. A plan of action including:
 - a. Services to be provided,
 - b. Activities to be provided,
 - c. Who is to provide services and activities, and
 - d. When services and activities are to be provided;
5. The anticipated date of discharge; and
6. An assessment of the resident's continuing need for services.

Article 16.

Counseling and Social Services.

§ 5.43. For all facilities except secure detention facilities the program of the facility shall be designed to provide counseling and social services which address needs in the following areas:

1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living;
2. Assisting the resident and the family in maintaining their relationships and planning for the future care of the resident;
3. Utilizing appropriate community resources in providing services and maintaining contacts with such resources;
4. Helping the resident with problems affecting the

ability to have satisfying personal relationships and use of the capacity for growth;

5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and

6. Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for return home, for independent living, or for other residential care.

§ 5.44. The provision of counseling and social services shall be documented in each resident's record except that this section does not apply to secure detention facilities.

§ 5.45. For all facilities, except secure detention facilities, counseling and other social services consistent with the goals of the Service Plan shall be provided to meet the specific needs of each resident in one of the following ways:

1. By a qualified staff member;
2. By service staff of the agency that placed the resident provided such staff is available on an as needed basis rather than on a limited basis (e.g., quarterly or semiannually);
3. On a contract basis by a professional child and family service worker licensed to practice in the Commonwealth of Virginia, other state(s) or the District of Columbia; or
4. On a contract basis by a professional child and family service worker who is working under the auspices of a public or private, nonprofit agency sponsored by a community based group.

Article 17.

Residential Services.

§ 5.46. There shall be evidence of a structured program of care that is designed to:

1. Meet the resident's physical needs;
2. Provide protection, guidance and supervision;
3. Promote a sense of security and self-worth; and
4. Meet the objectives of any required service plan.

§ 5.47. There shall be evidence of a structured daily routine that is designed to assure the delivery of program services.

§ 5.48. A daily activity log shall be maintained as a means of informing staff of significant happenings or problems experienced by residents including health and dental

complaints or injuries.

§ 5.49. Entries in the daily activity log shall be signed or initialed by the person making the entry.

§ 5.50. Routines shall be planned to assure that each resident shall have the amount of sleep and rest appropriate for his age and physical condition.

§ 5.51. Staff shall provide daily monitoring and supervision, and instruction, as needed, to promote the personal hygiene of the residents.

Article 18. Health Care Procedures.

§ 5.52. Facilities shall have written procedures for the prompt provision of:

1. Medical and dental services for health problems identified at admission;
2. Routine ongoing and follow-up medical and dental services after admission; and
3. Emergency services for each resident as provided by statute or by agreement with the resident's legal guardian.

§ 5.53. For all facilities except temporary care facilities written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;
2. Name, address, and telephone number of relative or other person to be notified;
3. Medical insurance company name and policy number or Medicaid number except that this requirement does not apply to secure detention facilities;
4. Information concerning:
 - a. Use of medication,
 - b. Medication allergies,
 - c. Any history of substance abuse except that this requirement does not apply to secure detention, and
 - d. significant medical problems; and
5. Written permission for emergency medical or dental care or a procedure and contacts for obtaining consent for emergency medical or dental care except that this section does not apply to secure detention facilities.

§ 5.54. Facilities specifically approved to provide respite care shall update the information required by § 5.53 at the time of each individual stay at the facility.

Article 19. Physical Examinations.

§ 5.55. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility, except that (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility ~~licensed or certified~~ *licensed/certified* by a state agency to another, (ii) a physical examination shall be conducted within 30 days after admission if a child is admitted on an emergency basis and a report of physical examination is not available, and (iii) this section does not apply if a child is admitted to a secure detention facility or to a temporary care facility.

§ 5.56. Following the initial examination, each resident shall have a physical examination annually except that this section does not apply to (i) security detention facilities, or (ii) temporary care facilities.

§ 5.57. In all facilities except (i) secure detention facilities, and (ii) temporary care facilities additional or follow-up examination and treatment shall be required when:

1. Prescribed by the examining physician; or
2. Symptoms indicate the need for an examination or treatment by a physician.

§ 5.58. Each physical examination report shall be included in the resident's record.

§ 5.59. For all facilities except (i) secure detention facilities and (ii) temporary care facilities each physical examination report shall include:

1. Immunizations administered;
2. Visual acuity;
3. Auditory acuity;
4. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;
5. Allergies, chronic conditions, and handicaps, if any;
6. Nutritional requirements, including special diets, if any;
7. Restriction of physical activities, if any;
8. Recommendations for further treatment, immunizations, and other examinations indicated;

Proposed Regulations

9. The date of the physical examination; and

10. The signature of a licensed physician, the physician's designee, or an official of a local health department.

§ 5.60. In all facilities except (i) secure detention facilities and (ii) temporary care facilities a child with a communicable disease, whose best interests would not be served by prohibiting admission, may be admitted only after a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing residents and staff; and
2. The facility is aware of the required treatment for the child and procedures to protect residents and staff.

§ 5.61. Recommendations for follow-up medical observation and treatment shall be carried out at the recommended intervals except that this section does not apply to (i) secure detention facilities or (ii) temporary care facilities.

§ 5.62. Except for (i) secure detention facilities, (ii) temporary care facilities, and (iii) respite care facilities, each facility shall provide written evidence of:

1. Annual examinations by a licensed dentist; and
2. Follow-up dental care as recommended by the dentist or as indicated by the needs of each resident.

§ 5.63. Each resident's record shall include notations of health and dental complaints and injuries showing symptoms and treatment given.

§ 5.64. Each resident's record shall include a current record of ongoing psychiatric or other mental health treatment and reports, if applicable.

§ 5.65. Provision shall be made for suitable isolation of any resident suspected of having a communicable disease.

§ 5.66. A well stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

Article 20. Medication.

§ 5.67. All medication shall be securely locked and properly labeled.

§ 5.68. Medication shall be delivered only by staff authorized by the director to do so.

§ 5.69. Staff authorized to deliver medication shall be informed of any known side effects of the medication and the symptoms of the effect.

§ 5.70. A program of medication shall be instituted for a specific resident only when prescribed in writing by a licensed physician.

§ 5.71. Medications that are classified as "controlled substances" as defined in § 54.1-3401 of the Code of Virginia shall only be obtained from a licensed physician or from a licensed pharmacist upon individual prescription of a licensed physician.

§ 5.72. A daily log shall be maintained of all medicines received by the individual resident.

§ 5.73. The attending physician shall be notified immediately of drug reactions or medication errors.

§ 5.74. The telephone number of a Regional Poison Control Center shall be posted on or next to at least one nonpay telephone in each building in which children sleep or participate in programs.

§ 5.75. At least one 30cc bottle of syrup of Ipecac shall be available on the premises of the facility for use at the direction of the Poison Control Center or physician.

Article 21. Nutrition.

§ 5.76. Provisions shall be made for each resident to have three nutritionally balanced meals daily.

§ 5.77. Menus shall be planned at least one week in advance.

§ 5.78. Any deviation(s) from the menu shall be noted.

§ 5.79. The menus including any deviations shall be kept on file for at least six months.

§ 5.80. The daily diet for residents shall be based on the generally accepted "Four Food Groups" system of nutrition planning. (The Virginia Polytechnic Institute and State University Extension Service is available for consultation.)

§ 5.81. The quantity of food served shall be adequate for the ages of the residents.

§ 5.82. Special diets shall be provided when prescribed by a physician.

§ 5.83. The established religious dietary practices of the resident shall be observed.

§ 5.84. Staff who eat in the presence of the residents shall be served the same meals.

§ 5.85. There shall be no more than 15 hours between the evening meal and breakfast the following day.

Article 22. Management of Resident Behavior.

Proposed Regulations

§ 5.86. The facility shall have written policies and procedures governing management of resident behavior. Rules of conduct, if any, shall be included in the written policies and procedures.

§ 5.87. The facility shall have written procedures for documenting and monitoring management of resident behavior.

§ 5.88. Written information concerning management of resident behavior shall be provided to prospective residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information; legal guardian(s); and referral agencies prior to admission except that for court ordered or emergency admissions this information shall be provided:

1. To residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information, within 12 hours following admission,
2. To referral agencies within 72 hours following the resident's admission, and
3. To legal guardians within 72 hours following the resident's admission except that this requirement shall not apply:
 - a. To secure detention facilities;
 - b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Board of Youth and Family Services; and
 - c. When a state mental hospital is evaluating a child's treatment needs as provided by § 16.1-275 of the Code of Virginia.

§ 5.89. When substantive revisions are made to policies governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information, and referral agencies, and
2. Legal guardians except that this requirement shall not apply:
 - a. To secure detention facilities;
 - b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Board of Youth and Family Services; and

c. When a state mental hospital is evaluating a child's treatment needs as provided in § 16.1-275 of the Code of Virginia.

§ 5.90. Only trained staff members may manage resident behavior.

Article 23. Confinement.

§ 5.91. When a resident is confined, the room shall not be locked nor the door secured in any manner that prevents the resident from opening it, except that this section does not apply to secure custody facilities such as learning centers and secure detention facilities.

§ 5.92. Any resident confined shall be able to communicate with staff.

§ 5.93. There shall be a staff check on the room at least every 30 minutes.

§ 5.94. The use of confinement shall be documented when confinement is used as a technique for managing resident behavior.

Article 24. Prohibitions.

§ 5.95. The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;
2. Limitation on contacts and visits with attorney, probation officer, regulatory personnel or placing agency representative;
3. Bans on contacts and visits with family or legal guardian(s) except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;
4. Delay or withholding of incoming or outgoing mail except as permitted by other applicable state and federal regulations or by order of a court of competent jurisdiction;
5. Any action which is humiliating, degrading, or abusive;
6. Corporal punishment;
7. Subjection to unsanitary living conditions;
8. Deprivation of opportunities for bathing or access to toilet facilities except as ordered by a licensed physician for a legitimate medical purpose and

Proposed Regulations

documented in the resident's record;

9. Deprivation of health care;

10. Deprivation of appropriate services and treatment;

11. Application of aversive stimuli except as permitted as part of an intrusive aversive therapy plan approved pursuant to other applicable state regulations;

12. Administration of laxatives, enemas, or emetics except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

13. Deprivation of opportunities for sleep or rest except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record; and

14. Limitation on contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to implement § 37.1-84.1 of the Code of Virginia and advocates employed by the Department for Rights of Virginians With Disabilities to implement §§ 51.5-36 through 51.5-39 of the Code of Virginia, PL 99-319 § 201.42 USC 10841, and PL 98-527, 42 USC § 6000 et seq.

Article 25.

Chemical or Mechanical Restraints.

§ 5.96. The use of mechanical restraints is prohibited except as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.

§ 5.97. The use of chemical restraints is prohibited.

Article 26.

Physical Restraint.

§ 5.98. Only after less intrusive interventions have failed or when failure to restrain a resident would result in harm to the resident or others, trained staff members may physically restrain a resident.

§ 5.99. The use of physical restraint shall be only that which is minimally necessary to protect the resident or others.

§ 5.100. The facility shall have written policies and procedures governing the use of physical restraint.

§ 5.101. The facility's procedures shall include methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

§ 5.102. Each application of physical restraint shall be

fully documented in the resident's record including:

1. Date;

2. Time;

3. Staff involved;

4. Circumstances;

5. Reason(s) for use of physical restraint;

6. Duration;

7. Method(s) of physical restraint used; and

8. Less intrusive interventions which were unsuccessfully attempted prior to using physical restraint.

§ 5.103. Each staff member responsible for supervision of children shall receive basic orientation to the facility's physical restraint procedures and techniques and to less intrusive interventions:

1. Within seven days of employment, and

2. Prior to assuming sole responsibility for the supervision of one or more residents.

Article 27.

Seclusion.

§ 5.104. Seclusion is allowed only as permitted by other applicable state regulations.

Article 28.

Timeout.

§ 5.105. Timeout is allowed only as permitted by other applicable state regulations.

§ 5.106. Repealed.

§ 5.107. Repealed.

Article 29.

Education.

§ 5.108. Each resident of compulsory school attendance age shall be enrolled in an appropriate educational program as provided in the Code of Virginia.

§ 5.109. The facility shall provide educational guidance and counseling for each resident in selection of courses and shall ensure that education is an integral part of the resident's total program.

§ 5.110. Facilities operating educational programs for handicapped children shall operate those programs in compliance with applicable state and federal regulations.

Proposed Regulations

§ 5.111. When a handicapped child has been placed in a residential facility without the knowledge of school division personnel in the resident's home locality, the facility shall contact the superintendent of public schools in that locality in order to effect compliance with applicable state and federal requirements relative to the education of handicapped children.

§ 5.112. When a facility has an academic or vocational program that is not certified or approved by the Department of Education, teachers in the program shall provide evidence that they meet the qualifications that are required in order to teach those specific subjects in the public schools.

Article 30. Religion.

§ 5.113. The facility shall have written policies regarding the opportunities for the residents to participate in religious activities.

§ 5.114. The facility's policies on religious participation shall be available to the resident and any individual or agency considering the placement of a child in the facility.

§ 5.115. Residents shall not be coerced to participate in religious activities.

Article 31. Recreation.

§ 5.116. There shall be a written description of the recreation program for the facility showing activities which are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents and which includes:

1. Opportunities for individual and group activities;
2. Free time for residents to pursue personal interests which shall be in addition to a formal recreation program;
3. Except in secure detention facilities, use of available community recreational resources and facilities;
4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and
5. Regularly scheduled indoor and outdoor recreational activities that are specifically structured to develop skills and attitudes (e.g., cooperation, acceptance of losing, etc.).

§ 5.117. The recreational program provided indoors, outdoors (both on and off the premises), and on field trips shall be directed and supervised by adults who are knowledgeable in the safeguards required for the specific

activities.

§ 5.118. Opportunities shall be provided for coeducational activities appropriate to the ages and developmental levels of the residents.

Article 32. Community Relationships.

§ 5.119. Opportunities shall be provided for the residents in a group living situation to participate in activities and to utilize resources in the community except that this section does not apply to secure detention facilities.

§ 5.120. Community interest in residents and efforts on their behalf (public parties, entertainment, invitations to visit families) shall be carefully evaluated to ascertain that these are in the best interest of the residents.

Article 33. Clothing.

§ 5.121. Provisions shall be made for each resident to have his own adequate supply of clean, comfortable, well-fitting clothes and shoes for indoor and outdoor wear.

§ 5.122. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities.

§ 5.123. Residents shall have the opportunity to participate in the selection of their clothing except that this section does not apply to secure detention facilities.

§ 5.124. Each resident's clothing shall be inventoried and reviewed at regular intervals to assure repair or replacement as needed.

§ 5.125. The resident shall be allowed to take personal clothing when the resident leaves the facility.

Article 34. Allowances and Spending Money.

§ 5.126. The facility shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money through earning, budgeting, spending, giving and saving except that this section does not apply to secure detention facilities.

§ 5.127. There shall be a written policy regarding allowances except that this section does not apply to secure detention facilities.

§ 5.128. The written policy regarding allowances shall be made available to legal guardians at the time of admission except that this section does not apply to secure detention facilities.

§ 5.129. The facility shall provide for safekeeping and for record keeping of any money that belongs to residents.

Proposed Regulations

Article 35. Work and Employment.

§ 5.130. Any assignment of chores, which are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

§ 5.131. Chores shall not interfere with regular school programs, study periods, meals or sleep.

§ 5.132. Work assignments or employment outside the facility including reasonable rates of payment shall be approved by the program director with the knowledge and consent of the legal guardian except that this section does not apply to secure detention facilities.

§ 5.133. The facility shall ensure that any resident employed inside or outside the facility is paid at least at the minimum wage required by the applicable law concerning wages and hours and that such employment complies with all applicable laws governing labor and employment except that this section does not apply to secure detention facilities.

§ 5.134. Any money earned through employment of a resident shall accrue to the sole benefit of that resident.

Article 36. Visitation at the Facility and to the Resident's Home.

§ 5.135. The facility shall provide written visitation policies and procedures permitting reasonable visiting privileges and flexible visiting hours.

§ 5.136. Copies of the written visitation policies and procedures shall be made available to the parents, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission except that when parents or legal guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 12 hours after admission.

Article 37. Use of Vehicles and Power Equipment.

§ 5.137. Any transportation provided for or used by children shall be in compliance with state, federal or international laws relating to:

1. Vehicle safety and maintenance;
2. Licensure of vehicles; and
3. Licensure of drivers.

§ 5.138. There shall be written safety rules for transportation of children, including handicapped children, appropriate to the population served.

§ 5.139. There shall be written safety rules for the use

and maintenance of vehicles and power equipment.

Article 38. Reports to Court.

§ 5.140. When the facility has received legal custody of a child pursuant to §§ 16.1-279 A or 16.1-279 B of the Code of Virginia copies of any foster care plans (required by §§ 16.1-281 and 16.1-282 of the Code of Virginia) submitted to the court shall be filed in the resident's record except that this section does not apply to secure detention facilities.

Article 39. Emergency Reports.

§ 5.141. Any serious incident, accident or injury to the resident ; any overnight absence from the facility without permission; any runaway; and any other unexplained absence shall be reported to the parent/legal guardian/placing agency within 24 hours.

§ 5.142. The resident's record shall contain:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name of the person who made the report to the parent/legal guardian or placing agency; and
6. The name of the person to whom the report was made.

Article 40. Suspected Child Abuse or Neglect.

§ 5.143. Any case of suspected child abuse or neglect shall be reported immediately to the local department of public welfare/social services as required by § 63.1-248.3 of the Code of Virginia.

§ 5.144. The resident's record shall include:

1. Date and time the suspected abuse or neglect occurred;
2. Description of the incident;
3. Action taken as a result of the incident; and
4. Name of the person to whom the report was made at the local department.

PART VI. DISASTER OR EMERGENCY PLANS.

Article 1.

Proposed Regulations

Procedures for Meeting Emergencies.

§ 6.1. Established written procedures shall be made known to all staff and residents, as appropriate for health and safety, for use in meeting specific emergencies including:

1. Severe weather;
2. Loss of utilities;
3. Missing persons;
4. Severe injury; and
5. Emergency evacuation including alternate housing.

Article 2. Written Fire Plan.

§ 6.2. Each facility with the consultation and approval of the appropriate local fire authority shall develop a written plan to be implemented in case of a fire at the facility.

§ 6.3. Each fire plan shall address the responsibilities of staff and residents with respect to:

1. Sounding of fire alarms;
2. Evacuation procedures including assembly points, head counts, primary and secondary means of egress, evacuation of children with special needs, and checking to ensure complete evacuation of the building(s);
3. A system for alerting fire fighting authorities;
4. Use, maintenance and operation of fire fighting and fire warning equipment;
5. Fire containment procedures including closing of fire doors, fire windows or other fire barriers;
6. Posting of floor plans showing primary and secondary means of egress; and
7. Other special procedures developed with the local fire authority.

§ 6.4. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations determined by the appropriate local fire authority.

§ 6.5. The written fire plan shall be reviewed with the local fire authority at least annually and updated, if necessary.

§ 6.6. The procedures and responsibilities reflected in the written fire plan shall be made known to all staff and residents.

Article 3.

Posting of Fire Emergency Phone Number.

§ 6.7. The telephone number of the fire department to be called in case of fire shall be prominently posted on or next to each telephone in each building in which children sleep or participate in programs.

Article 4. Portable Fire Extinguishers.

§ 6.8. Portable fire extinguishers shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, on each floor there shall be installed and maintained at least one approved type ABC portable fire extinguisher having at least a 2A rating.

§ 6.9. Fire extinguishers shall be mounted on a wall or a post where they are clearly visible and so that the top is not more than five feet from the floor except that if a fire extinguisher weighs more than 140 pounds, it shall be installed so that the top is not more than 2-1/2 feet from the floor. They shall be easy to reach and remove and they shall not be tied down, locked in a cabinet, or placed in a closet or on the floor, except that where extinguishers are subject to malicious use, locked cabinets may be used provided they include a means of emergency access.

§ 6.10. All required fire extinguishers shall be maintained in operable condition at all times.

§ 6.11. Each fire extinguisher shall be checked by properly oriented facility staff at least once each month to ensure that the extinguisher is available and appears to be in operable condition. A record of these checks shall be maintained for at least two years and shall include the date and initials of the person making the inspection.

§ 6.12. Each fire extinguisher shall be professionally maintained at least once each year. Each fire extinguisher shall have a tag or label securely attached which indicates the month and year the maintenance check was last performed and which identifies the company performing the service.

Article 5. Smoke Alarms.

§ 6.13. Smoke detectors or smoke detection systems shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, the facility shall provide at least one approved and properly installed smoke detector:

1. In each bedroom hallway;
2. At the top of each interior stairway;
3. In each area designated for smoking;

Proposed Regulations

4. In or immediately adjacent to each room with a furnace or other heat source; and

5. In each additional location directed by the local building official, the local fire authority, or the state fire authority.

§ 6.14. Each smoke detector shall be maintained in operable condition at all times.

§ 6.15. If the facility is provided with single station smoke detectors each smoke detector shall be tested by properly oriented facility staff at least once each month and if it is not functioning, it shall be restored immediately to proper working order. A record of these tests shall be maintained for at least two years and shall include the date and initials of the person making the test.

§ 6.16. If the facility is provided with an automatic fire alarm system, the system shall be inspected by a qualified professional firm at least annually. A record of these inspections shall be maintained for at least two years and shall include the date and the name of the firm making the inspection.

Article 6. Fire Drills.

§ 6.17. At least one fire drill (the simulation of fire safety procedures included in the written fire plan) shall be conducted each month in each building at the facility occupied by residents.

§ 6.18. Fire drills shall include, as a minimum:

1. Sounding of fire alarms;
2. Practice in building evacuation procedures;
3. Practice in alerting fire fighting authorities;
4. Simulated use of fire fighting equipment;
5. Practice in fire containment procedures; and
6. Practice of other simulated fire safety procedures as may be required by the facility's written fire plan.

§ 6.19. During any three consecutive calendar months, at least one fire drill shall be conducted during each shift.

§ 6.20. False alarms shall not be counted as fire drills.

§ 6.21. The facility shall designate at least one staff member to be responsible for conducting and documenting fire drills.

§ 6.22. A record shall be maintained on each fire drill conducted and shall include the following information:

1. Building in which the drill was conducted;

2. Date of drill;

3. Time of drill;

4. Amount of time to evacuate building;

5. Specific problems encountered;

6. Staff tasks completed:

- a. Doors and windows closed,
- b. Head count,
- c. Practice in notifying fire authority, and
- d. Other;

7. Summary; and

8. Signature of staff member responsible for conducting and documenting the drill.

§ 6.23. The record for each fire drill shall be retained for two years subsequent to the drill.

§ 6.24. The facility shall designate a staff member to be responsible for the fire drill program at the facility who shall:

1. Ensure that fire drills are conducted at the times and intervals required by these standards and the facility's written fire plan;
2. Review fire drill reports to identify problems in the conduct of fire drills and in the implementation of the requirements of the written fire plan;
3. Consult with the local fire authority, as needed, and plan, implement and document training or other actions taken to remedy any problems found in the implementation of the procedures required by the written fire plan; and
4. Consult and cooperate with the local fire authority to plan and implement an educational program for facility staff and residents on topics in fire prevention and fire safety.

Article 7. Staff Training in Fire Procedures.

§ 6.25. Each new staff member shall be trained in fire procedures and fire drill procedures within seven days after employment.

§ 6.26. Each new staff member shall be trained in fire procedures and fire drill procedures prior to assuming sole responsibility for the supervision of one or more children.

Article 8.

"Sighted Guide" Training for Emergency Use.

§ 6.27. When a blind or visually impaired child is admitted the facility shall obtain the services of an orientation and mobility specialist from the Department of Visually Handicapped to provide "sighted guide" training for use in emergencies except that this requirement shall not apply to secure detention facilities.

§ 6.28. "Sighted guide" training for use in emergencies shall be required of all personnel having responsibility for supervision of a blind or visually handicapped child except that this requirement shall not apply to secure detention facilities.

V.A.R. Doc. No. R94-53; Filed September 28, 1993, 4:03 p.m.

COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF EDUCATION
 DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES
 DEPARTMENT OF SOCIAL SERVICES
 DEPARTMENT OF YOUTH AND FAMILY SERVICES

**INITIAL APPLICATION FOR A STATE LICENSE/CERTIFICATE
 TO OPERATE A RESIDENTIAL FACILITY FOR CHILDREN**

The completed application along with any other information required for licensure, certification or approval shall be submitted at least 60 days in advance of the planned opening date. (See § 1.26 of the *Interdepartmental Standards*.) The licensing/certification study will begin after a complete application is received.

Application is hereby made to operate a residential facility for children or for program certification pursuant to provisions of the *Code of Virginia*.

I. IDENTIFYING DATA

Name of residential facility for children _____

Street address _____ City _____

County, if applicable _____ State _____ Zip Code _____

Mailing address, if different from Street Address _____

City _____ State _____ Zip Code _____

Telephone Number of Facility () _____

Directions to facility _____

Name of chief administrative officer _____ Position _____

Name of program director _____

Sponsoring organization's name _____

Sponsor's address _____

_____ Telephone () _____

Anticipated dates the facility will be closed and anticipated dates that residents will be off campus for extended trips and events during the next 24 months:

032-05-553/3 (03/92)

SPD\WP50\FORMS\INAPPLIC.392

Facility Type
 Check appropriate box(es)

<input type="checkbox"/> Child Caring Institution (CCI) ¹	<input type="checkbox"/> Independent Living Program (ILP)	<input type="checkbox"/> Respite Care Facility (RC)
<input type="checkbox"/> Emergency Shelter (ES)	<input type="checkbox"/> Learning Center (LC)	<input type="checkbox"/> School for Handicapped (SH)
<input type="checkbox"/> Facility for Mentally Ill/Emotionally Disturbed (MED)	<input type="checkbox"/> Less Secure Detention (LSD)	<input type="checkbox"/> Secure Detention (SDH)
<input type="checkbox"/> Facility for Mentally Retarded (MR)	<input type="checkbox"/> Post-Dispositional Group Home (POS)	<input type="checkbox"/> Temporary Care Facility (TC)
<input type="checkbox"/> Facility for Substance Abusers (SA)	<input type="checkbox"/> Pre-Dispositional Group Home (PRE)	<input type="checkbox"/> Wilderness Program (WP)

II. POPULATION

Number of Children for which license/certificate is requested Gender Minimum age Maximum age

III. ORGANIZATIONAL INFORMATION

The facility is operated by:

A corporation An unincorporated organization or association

A public agency An individual A partnership

IV. RESIDENTIAL ENVIRONMENT

A. List all buildings below. Attach additional pages if necessary. In addition, a sketch of the grounds may be included, if desired.

Name or Number of Building	Date of Construction	Date of Occupancy	Function	Number of Children Housed
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

¹ All facilities which will be regulated by the Department of Social Services are in this category.

B. Give name and address of owner of physical plant.

Name _____
 Address _____

V. RECORDS:

Identify the location of the following records:

- A. Financial records _____
- B. Personnel records _____
- C. Residents' records _____

VI. REQUIRED ATTACHMENTS

NOTE: The following information must be submitted with an initial application:

Attached

- A. Facility Floor Plans indicating the exact dimensions of rooms to be used, including room length, width, and ceiling heights; designating the functions of each room; and indicating the number of basins, tubs, commodes, and showers in the bathrooms.
- B. Deployment Plan:
 - 1. Staff Information Sheet: A list of staff members with designated positions, qualifications, etc., in the same format as the attached form. (Refer to attached form #032-05-552.)
 - 2. Narrative describing planned deviations from staff/child ratios established in Part III §§ 3.33-3.34, if applicable. (Part III, §§ 3.31-3.32)
- C. Job descriptions corresponding to those positions listed on the staff information sheet. (Part III, Article 6, § 3.12.)
- D. Statement of philosophy and objectives of facility including a comprehensive description of the population to be served and the program to be offered. Please include any brochures/pamphlets distributed to the public and to agencies using your program. (Part II, Article 2, § 2.5.)
- E. Copy of criteria for admission. (Part V, Article 1., § 5.1)

Attached

F. Inspections:

- 1. Report of Fire Inspection. (See attached form #032-05-557). (Part IV, Article 2, § 4.3.1.) If not attached, date inspection scheduled.
- 2. Report of Sanitation Inspection. (See attached form #032-05-555) (Part IV, Article 2, § 4.3.2.) If not attached, date inspection scheduled.

G. Certificate of Occupancy: Issued by the local building official no more than 90 days prior to the date of this application, indicating that the building is classified for its proposed licensed/certified purposes. (Part IV, Article 2, § 4.2.)

NOTE: Buildings owned and operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Department of Youth and Family Services are not required to have a certificate of occupancy.

H. Financial Information for new applicants:

- 1. Private facilities
 - a) Documentation of funds or line of credit sufficient for 90 days operating expenses. (Part II, Article 3, § 2.9.)
 - b) Balance sheet showing assets and liabilities. (\$2.10)
 - c) Working budget showing projected revenue and expenses for the first year of operation. (\$2.10)
- 2. State and local government operated facilities - a working budget showing appropriated revenue and projected expenses for the first year of operation. (Part II, Article 3, § 2.12)

I. For a facility operated by a Virginia corporation submit a copy of the Articles of Incorporation, the Bylaws, and the Certificate of Incorporation (or Certificate of Amendment) from the Virginia State Corporation Commission or the appropriate state office.

For a facility located in Virginia but operated by an out-of-state corporation, submit a copy of the Articles of Incorporation, the Bylaws, and the Certificate of Authority issued by the Virginia State Corporation Commission.

J. For facilities with a governing board, attach:

- 1. A copy of the completed Board Statement signed by the Secretary of the Board. (See attached form #032-05-559.) (Exception: This does not apply to State operated facilities.)

Attached

2. A list of all members of the Board, the Executive Committee, or, for a public agency, all members of the legally accountable governing body. Each list should include the name, address and office/title of each individual.
- K. For facilities operated by a corporation, an unincorporated organization or an association, references for three officers of the Board including the President, secretary-treasurer and a member-at-large. (Refer to attached form.)

In making this application, I state that:

- I am in receipt of and have read a copy of *Standards for Interdepartmental Regulation of Residential Facilities for Children* and the certification standards which are applicable to this facility.
- I certify that it is my intent to comply with the applicable statutes, with the aforementioned *Interdepartmental Standards* and with certification standards and to remain in compliance with them if I am so licensed/certified.
- I grant permission to authorized agents of the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth and Family Services to make all necessary investigation of the circumstances surrounding this application and any statement made herein, including inspection of the facility. I understand that, following licensure/certification, authorized agents will make announced and unannounced visits to the facility to determine its continuing compliance with standards.
- I understand that inspection reports from the state or local health department and the State Fire Marshal or local fire official are required, as applicable, and are to be obtained.
- I understand that, in the event of denial of this application for a license/certificate, I have the right to request an administrative hearing.
- To the best of my knowledge and belief, all information given herein, in the attached documents, and during the pre-application process is true and correct. True and correct information will be supplied as requested during all subsequent investigations.

(Signature)*

(Position)

(Printed signer's name)

(Date)

¹ This application shall be signed by the individual legally responsible for the operation of the residential facility for children, or, if the facility is to be operated by a board/governing body, by an officer of that board/governing body, preferably the chairman. If the facility is to be operated by a governmental entity, the person employed by that government to operate the facility may sign the application.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EDUCATION
DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES
DEPARTMENT OF SOCIAL SERVICES
DEPARTMENT OF YOUTH AND FAMILY SERVICES

RENEWAL APPLICATION FOR A STATE LICENSE/CERTIFICATE
TO OPERATE A RESIDENTIAL FACILITY FOR CHILDREN

The completed application along with any other information required for a renewal of licensure should be submitted within 30 days of receipt. (See § 1.42 of the *Interdepartmental Standards*.) The licensing/certification study will begin after a complete application is received.

Application is hereby made to operate a residential facility for children or for program certification pursuant to provisions of the *Code of Virginia*.

I. IDENTIFYING DATA

Name of residential facility for children _____

* Street address _____ City _____

* County, if applicable _____ State _____ Zip Code _____

* Mailing address, if different from Street Address _____

* City _____ State _____ Zip Code _____

* Telephone Number of Facility () _____

* Directions to facility _____

Name of chief administrative officer _____ Position _____

1. Date(s) chief administrative officer met with governing body to review services, personnel needs, and fiscal management _____

2. Date performance of chief administrative officer evaluated _____

Name of program director _____

* Sponsoring organization's name _____

* Sponsor's address _____

Telephone () _____
Anticipated dates the facility will be closed and anticipated dates that residents will be off campus for extended trips and events during the next 24 months: _____

* Complete only if there has been a change since your last application.

FACILITY TYPE

Complete only if requesting a change. Check appropriate box(es).

- Child Caring Institution (CCI)¹
- Emergency Shelter (ES)
- Facility for Mentally Ill/Emotionally Disturbed (MED)
- Facility for Mentally Retarded (MR)
- Facility for Substance Abusers (SA)
- Independent Living Program (ILP)
- Learning Center (LC)
- Less Secure Detention (LSD)
- Post-Dispositional Group Home (POS)
- Pre-Dispositional Group Home (PRE)
- Respite Care Facility (RC)
- School for Handicapped (SH)
- Secure Detention (SDH)
- Temporary Care Facility (TC)
- Wilderness Program (WP)

II. POPULATION

Number of Children for which license/certificate is requested	Gender	Minimum age	Maximum age

III. ORGANIZATIONAL INFORMATION

The facility is operated by:

- A corporation
- A public agency
- An unincorporated organization or association
- An individual
- A partnership

IV. RESIDENTIAL ENVIRONMENT

A. List all buildings below. Attach additional pages if necessary. In addition, a sketch of the grounds may be included, if desired.

Name or Number of Building	Date of Construction	Date of Occupancy	Function	Number of Children Housed

¹ Includes all facilities regulated by the Department of Social Services.

B. Give name and address of owner of physical plant.

Name _____

Address _____

V. RECORDS:

Identify the location of the following records:

- A. Financial records _____
- B. Personnel records _____
- C. Residents' records _____

VI. REQUIRED ATTACHMENTS

NOTE: The following information must be submitted with a renewal application:

- | | Attached | No Change |
|---|--------------------------|--------------------------|
| A. Facility Floor Plans indicating the exact dimensions of rooms to be used, including room length, width, and ceiling heights; designating the functions of each room; and indicating the number of basins, tubs, commodes, and showers in the bathrooms. | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Deployment Plan: | | |
| 1. Staff Information Sheet: A list of staff members with designated positions, qualifications, etc., in the same format as the attached form (See attached Staff Information Sheet form #032-05-552.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Narrative describing planned deviations from staff child ratios established in Part III §§ 3.33-3.34, if applicable. (Part III, §§ 3.31-3.32) | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Job descriptions corresponding to those positions listed on the staff information sheet. (Part III, Article 6, § 3.12.) | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Statement of philosophy and objectives of facility including a comprehensive description of the population to be served and the program to be offered. Please include any brochures/pamphlets distributed to the public and to agencies using your program. (Part II, Article 2, § 2.5.) | <input type="checkbox"/> | <input type="checkbox"/> |
| E. Copy of criteria for admission (Part V, Article 1, § 5.1) | <input type="checkbox"/> | <input type="checkbox"/> |

- | | <u>Attached</u> | <u>No Change</u> |
|--|--------------------------|--------------------------|
| F. Inspections: | | |
| 1. <u>Report of Fire Inspection.</u> (See attached form #032-05-557.) (Part IV, Article 2, § 4.3.1.) If not attached, date inspection scheduled. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. <u>Report of Sanitation Inspection.</u> (See attached form #032-05-555.) (Part IV, Article 2, § 4.3.2.) If not attached, date inspection scheduled. | <input type="checkbox"/> | <input type="checkbox"/> |
| G. Certificate of Occupancy: For a privately owned facility or a facility owned by local government, if a <u>new building has been constructed, or if there has been a change of use or additions/alterations to buildings that have been previously licensed.</u> (Part IV, Article 2, § 4.2). | | |
| Note: Buildings owned and operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services, and the Department of Youth and Family Services are not required to have a certificate of occupancy. | | |
| H. Financial Information for renewals: | | |
| 1. Private or public facilities with approved rates established in accordance with the Interdepartmental Rate Setting Process. (Part II, Article 3, § 2.11) | | |
| a) Copy of most recently completed financial audit | <input type="checkbox"/> | <input type="checkbox"/> |
| b) A report on any changes that affect the fiscal condition, if any, or a statement indicating that no such changes have occurred | <input type="checkbox"/> | <input type="checkbox"/> |
| c) Working budget showing projected revenue and expenses for the coming year | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. State and local government operated facilities that do not have an approved rate established in accordance with the Interdepartmental Rate Setting Process - a working budget showing appropriated revenue and projected expenses for the coming year. (Part II, Article 3, § 2.12) | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Private facilities with no approved rate set: | | |
| a. Operating statement showing revenue and expenses for the past year | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Working budget showing projected revenue and expenses for the coming year | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Balance sheet showing assets and liabilities | <input type="checkbox"/> | <input type="checkbox"/> |

- | | <u>Attached</u> | <u>No Change</u> |
|---|--------------------------|--------------------------|
| d. Written assurance that documentation provided in a, b, and c above present a complete and accurate report of the current fiscal conditions of the facility. (Part II, Article 3, § 2.13). | <input type="checkbox"/> | <input type="checkbox"/> |
| I. For a facility operated by a Virginia corporation, submit a copy of the Articles of Incorporation, the By-laws, and the Certificate of Incorporation (or Certificate of Amendment) from the Virginia State Corporation Commission or the appropriate state office. | <input type="checkbox"/> | <input type="checkbox"/> |
| For a facility located in Virginia but operated by an out-of-state corporation, submit a copy of the Articles of Incorporation, the Bylaws, and the Certificate of Authority issued by the Virginia State Corporation Commission. | <input type="checkbox"/> | <input type="checkbox"/> |
| J. For facilities with a governing board, attach: | | |
| 1. A copy of the completed Board Statement signed by the Secretary of the Board. (See attached form #032-05-559.) (Exception: This does not apply to State operated facilities.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. A list of all members of the Board, the Executive Committee, or, for a public agency, all members of the legally accountable governing body. Each list should include the name, address and office/ title of each individual. | <input type="checkbox"/> | <input type="checkbox"/> |

In making this application, I state that:

1. I am in receipt of and have read a copy of *Standards for Interdepartmental Regulation of Residential Facilities for Children* and the certification standards which are applicable to this facility.
2. I certify that it is my intent to comply with the applicable statutes, with the aforementioned *Interdepartmental Standards* and with certification standards and to remain in compliance with them if I am so licensed/certified.
3. I grant permission to authorized agents of the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth and Family Services to make all necessary investigation of the circumstances surrounding this application and any statement made herein, including inspection of the facility. I understand that, following licensure/certification, authorized agents will make announced and unannounced visits to the facility to determine its continuing compliance with standards.
4. I understand that inspection reports from the state or local health department and the State Fire Marshal or local fire official are required, as applicable, and are to be obtained.
5. I understand that, in the event of denial of this application for a license/certificate, I have the right to request an administrative hearing.

- 6. To the best of my knowledge and belief, all information given herein, in the attached documents, and during the pre-application process is true and correct. True and correct information will be supplied as requested during all subsequent investigations.

 (Signature) (Position)

 (Printed signer's name) (Date)

RETURN ORIGINAL TO: THE TEAM LEADER IDENTIFIED IN THE EXPIRATION LETTER

¹ Once a facility has been fully licensed/certified, its renewal applications may be signed by its director/chief administrative officer. If the facility is to be operated by a governmental entity, the person employed by that government to operate the facility may sign the application.

COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF EDUCATION
 DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES
 DEPARTMENT OF SOCIAL SERVICES
 DEPARTMENT OF YOUTH AND FAMILY SERVICES

ABBREVIATED RENEWAL APPLICATION FOR A STATE LICENSE/CERTIFICATE
 TO OPERATE A RESIDENTIAL FACILITY FOR CHILDREN

The completed application along with any other information required for a renewal of licensure should be submitted within 30 days of receipt. (See § 1.42 of the *Interdepartmental Standards*.) The licensing/certification study will begin after a complete application is received.

Application is hereby made to operate a residential facility for children or for program certification pursuant to provisions of the *Code of Virginia*.

I. IDENTIFYING DATA

Name of residential facility for children _____

- * Street address _____ City _____

- * County, if applicable _____ State _____ Zip Code _____

- * Mailing address, if different from Street Address _____

- * City _____ State _____ Zip Code _____

- * Telephone Number of Facility () _____

- * Directions to Facility _____

Name of chief administrative officer _____ Position _____

1. Date(s) chief administrative officer met with governing body to review services, personnel needs and fiscal management _____

2. Date performance of chief administrative officer evaluated _____

Name of program director _____

- * Sponsoring organization's name _____

- * Sponsor's address _____

_____ Telephone _____

Anticipated dates the facility will be closed and anticipated dates that residents will be off campus for extended trips and events during the next 24 months: _____

- * Complete only if there has been a change since your last application.

II. REQUIRED ATTACHMENTS

NOTE: The following information must be submitted with a renewal application:

- | | <u>Attached</u> | <u>No Change</u> |
|--|--------------------------|--------------------------|
| A. Deployment Plan: | | |
| 1. Staff Information Sheet: A list of staff members with designated positions, qualifications, etc., in the same format as the attached form (See attached Staff Information Sheet form #032-05-552.). | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Narrative describing planned deviations from staff/child ratios established in §§ 3.33-3.34, if applicable. (Part III, §§ 3.31-3.32.) | <input type="checkbox"/> | <input type="checkbox"/> |
| B. If there has been a change, job descriptions corresponding to those positions listed on the staff information sheet. (Part III, Article 6, § 3.12.) | <input type="checkbox"/> | <input type="checkbox"/> |
| C. <u>Inspections:</u> | | |
| 1. <u>Report of Fire Inspection.</u> (See attached Form #032-05-557.) (Part IV, Article 2, § 4.3.1.) If not attached, date inspection scheduled. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. <u>Report of Sanitation Inspection.</u> (See attached form #032-05-555.) (Part IV, Article 2, § 4.3.2.) If not attached, date inspection scheduled. _____ | <input type="checkbox"/> | <input type="checkbox"/> |

- | | <u>Attached</u> | <u>No Change</u> |
|---|--------------------------|--------------------------|
| F. Location of Records.
(Financial, personnel and residents.) | <input type="checkbox"/> | <input type="checkbox"/> |
| G. Physical Plant.
(Structural modifications, additions or change in use.) | <input type="checkbox"/> | <input type="checkbox"/> |

In making this application, I state that:

1. I am in receipt of and have read a copy of *Standards for Interdepartmental Regulation of Residential Facilities for Children* and the certification standards which are applicable to this facility.
2. I certify that it is my intent to comply with the applicable statutes, with the aforementioned *Interdepartmental Standards* and with certification standards, and to remain in compliance with them if I am so licensed/certified.
3. I understand that authorized agents of the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth and Family Services have the authority to investigate all aspects of this facility's operations, to inspect the facility, and to make all necessary investigations of the circumstances surrounding this application and any statement made herein. I understand that, following licensure/certification, authorized agents will make announced and unannounced visits to the facility to determine its continuing compliance with standards.
4. I understand that inspection reports from the state or local health department and the State Fire Marshal or local fire official are required, as applicable, and are to be obtained.
5. I understand that, in the event of denial of this application for a license/certificate, I have the right to request an administrative hearing.
6. To the best of my knowledge and belief, all information given herein, in the attached documents, and during the pre-application process is true and correct. True and correct information will be supplied as requested during all subsequent investigations.

(Signature) (Position)

(Printed Signer's Name) (Date)

RETURN ORIGINAL TO: THE TEAM LEADER IDENTIFIED IN THE EXPIRATION LETTER

Once a facility has been fully licensed/certified, its renewal applications may be signed by its director/chief administrative officer. If the facility is to be operated by a governmental entity, the person employed by that government to operate the facility may sign the application.

III. SELF CERTIFICATION ITEMS

NOTE: If there have been any changes in the following areas, describe by submitting the document(s) describing or constituting the change.

- | | | |
|--|--------------------------|--------------------------|
| A. Governing Body. | | |
| 1. membership and officers of the partnership, corporation, etc. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. administrative structure of governing body. | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Administrative Structure of the facility. | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Finances.
(Income, expenses, assets and liabilities that significantly change the fiscal condition of the facility.) | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Policies with respect to programs, services, personnel, emergency/disaster (See those standards listed in the attachment, which require specific written policies and submit a copy of each new or revised written policy.) | <input type="checkbox"/> | <input type="checkbox"/> |
| E. Programs and Services at the Facility. (Additions, deletions, changes in programs and services and target population.) | <input type="checkbox"/> | <input type="checkbox"/> |

ATTACHMENT

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL
FACILITIES FOR CHILDREN

Abbreviated Renewal Application
Self-Certification Items (Section III D, Policy)

The standards listed below require written policies pertinent to programs, services, personnel, or emergency/disaster. Any new policies or policy changes relevant to these standards shall be submitted with the renewal application for an abbreviated study.

- 2.5 Program philosophy;
- 2.25 Participation of residents in research;
- 2.30 Confidentiality of records;
- 2.36 Disposal of records if facility ceases to operate;
- 3.9 Written entry level qualifications for staff;
- 3.12 Job descriptions;
- 3.16 Hiring practices;
- 3.17 Child abuse and neglect;
- 3.61 Use of volunteers or students;
- 4.63 Possession of firearms;
- 5.1 Criteria for admission;
- 5.21 Emergency admission;
- 5.25 Discharge;
- 5.52 Medical and dental services and emergency services;
- 5.86 Management of resident behavior and rules of conduct;
- 5.87 Documentation and monitoring of management of resident behavior;
- 5.113 Opportunities for participation in religious activities;
- 5.116 Recreational program;
- 5.127 Allowance;
- 5.135 Visitation;
- 5.138 Safety rules for transportation;
- 5.139 Safety rules for use and maintenance of vehicles and power equipment.
- 6.1 Emergency procedures for weather, utilities, missing persons, severe injury, and emergency evacuation.

SPD\WP50\FORMS\ABRENAPP.ATT

12 23

Proposed Regulations

STATE EDUCATION ASSISTANCE AUTHORITY

Title of Regulation: VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs Under Title IV, Part B of the Higher Education Act of 1965 as amended.

Statutory Authority: § 23-38.33:1 C 7 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through December 17, 1993.

(See Calendar of Events section for additional information)

Basis: The Virginia Student Assistance Authorities is comprised of the State Education Assistance Authority and the Virginia Education Loan Authority. The regulations are promulgated by the State Education Assistance Authority in its function as a student loan guarantor, under the statutory authority of § 23-38.33:1 C 7 of the Code of Virginia. The guaranteed student loan programs are governed by the Higher Education Act, as amended. Lenders and schools participating in the SEAA's programs also must comply with the requirements set forth in federal regulations, in 34 CFR 668 and 682. The SEAA's regulations supplement federal regulations and statute.

Purpose: The proposed regulations are intended to reflect changes in federal statute and regulations that have occurred since the agency's current regulations were published in final form on July 13, 1992. Amendments to the Higher Education Act were enacted on July 23, 1992. The U.S. Department of Education published revisions to 34 CFR 682 on December 18, 1992.

Substance: Changes to the regulations are described below:

Section 1.1, Definitions. References to specific loan programs in this section now reflect that reauthorization added the word "federal" to the titles of the Title IV, Part B loan programs. The definition of "abbreviated due diligence" reflects that the "Cure Bulletin," a federal dear colleague letter has been incorporated in 34 CFR 682. The definition of "deferment" reflects a recent federal interpretation that deferring a student loan does not delay its conversion to repayment status. The definition of "forbearance" was expanded to mirror federal statute. The definition of "guarantee" incorporates provisions in reauthorization that permit the payment of PLUS loan death claims based on the student's death. The definition of "satisfactory repayment arrangement" was necessary to describe conditions under which the agency will renew loan eligibility for defaulted borrowers consistent with federal statutory changes. The definition of "Stafford" incorporates a new unsubsidized loan established by reauthorization.

Section 2.1, Borrower eligibility. The agency's requirements have been updated to reflect new

federal statute defining the minimum academic year as 30 weeks and deleting grade-level progression as a condition permitting additional loan guarantees. The section also reflects federal authorization by deleting repayment in full as the only means of establishing renewed loan eligibility for defaulted borrowers and by permitting renewed eligibility with six consecutive monthly payments in an amount agreed upon by the guarantor.

Section 3.1, Lender responsibilities. The SEAA's lender due diligence requirements have been largely deleted in response to new federal regulations. The federal regulations define endorser due diligence standards, skiptracing standards and required due diligence for quarterly-billed loans that previously had not been defined. The new federal standards permit lenders more flexibility than did the SEAA's while adequately protecting the agency's interest in the loans. Therefore, the agency has elected to rely on federal regulations alone in these areas. The agency has maintained its authority to require lenders to request preclaims assistance and supplemental preclaims assistance on a specific schedule.

Disbursement requirements reflect changes in federal statute and regulations which require federal PLUS checks to be made copayable to the borrower and the school and be mailed to the school. The agency's late disbursement requirements were updated to respond to changes in federal regulations which make it necessary for schools to certify applications earlier in certain cases.

Section 4.2, Capitalization of interest. Changes in federal guidance, statute and regulations have superseded the SEAA's requirements for capitalizing interest. Therefore, the agency's requirements were deleted. These changes are intended to make it easier for lenders to capitalize interest in situations where it is to the borrower's benefit to do so in order to avoid default.

Section 4.4, Forbearance. Reauthorization and new federal regulations expand the use of administrative forbearances which do not require the borrower's agreement. The regulations have been updated to specify that these types of forbearances do not count against the agency's total forbearance limit. The agency's total limit has been increased from 24 to 36 months. The agency's limitation on renewing forbearances with outstanding interest charges has been deleted in response to federal changes in interest capitalization requirements.

Part V, Claims. The documentation requirements for all types of claims now include a longstanding agency requirement that lenders include a collection history. They also reflect that lenders need include paper copies of repayment agreements only if they are signed by the borrowers. Otherwise, lenders need only

document in their collection history that a repayment agreement was sent to the borrower and show the terms of the repayment agreement.

Section 5.4, Bankruptcy claims. Changes in reauthorization have made obsolete most of the agency's requirements for filing bankruptcy claims. Most of the agency's requirements for handling these claims have been deleted in favor of relying on federal guidance alone. However, in order to protect the agency's ability to contest discharge in a timely manner, the requirement that lenders notify the SEAA within five business days if notified that the borrower has filed a hardship petition after filing a bankruptcy claim with the guarantor has been retained. This notification requirement also has been expanded to include situations in which the lender is initially told by the court not to file proof of claim but advised by the court at a later date to file a proof of claim.

Section 5.5, Payment of interest on claims. Federal regulations published on December 18, 1992, specify that, although guarantors are permitted up to 90 days to review and deny or pay a claim, the U.S. Department of Education does not reinsure interest after the 60th day of guarantor review. Therefore, claim interest payment totals have been reduced by 30 days and the regulations state that the agency will pay no more interest than is reinsured by the U.S. Department of Education. In addition, interest payment for death claims reflects SEAA's authority to pay death claims for PLUS loans in which the student has died. Interest payment for bankruptcy claims states that the limitation does not apply to delinquent interest at the time the borrower filed bankruptcy. Instead, lenders are advised to capitalize this interest at the time of filing a claim.

Issues: The proposed regulations are primarily a reflection of federal changes to the student loan program which supersede the SEAA's authority. The areas in which the SEAA has exercised its own regulatory authority are as follows:

Section 3.1, Lender responsibilities. Guarantors are permitted to institute due diligence requirements that exceed federal standards. The SEAA has elected not to exercise this authority because federal requirements adequately protect the agency's interests. The agency's disbursement requirements exceed those of the federal government by requiring PLUS checks to indicate the student's name and Social Security number. This is necessary to assist schools in applying PLUS disbursements to student accounts.

Section 4.4, Forbearance. Federal statute and regulations do not limit the total amount of forbearance that may be provided to borrowers except in the case of internship and residency forbearance. The SEAA has elected to expand its agency limit from 24 to 36 months. The agency has also expanded

certain categories of forbearance that do not count against this limit. Given the wide variety of deferment options available to borrowers and the availability of three-years hardship forbearance, the agency's total forbearance limitation is necessary to limit capitalized interest costs to federal taxpayers and to the agency's financial reserves.

Section 5.5, Payment of interest on claims. Changes to the regulations limiting the claim interest to no more than is reinsured by the U.S. Department of Education were necessary to avoid draining the agency's financial reserves and to ensure the agency's ability to continue paying claims in a timely manner.

Estimated Impact: The SEAA serves Virginia students, approximately 125 Virginia schools and approximately 150 lenders. In addition, out-of-state students attending Virginia schools may use SEAA's guarantee as may Virginia students attending out-of-state schools. However, the vast majority of the SEAA's loan volume represents Virginia students attending Virginia schools.

Costs to Borrowers: These regulations should impose no costs upon borrowers. The regulations will permit defaulted borrowers greater flexibility in regaining student loan eligibility. The regulations also permit borrowers greater flexibility in the use of forbearance to prevent default.

Costs to Schools: The regulations may impose additional costs upon schools, particularly in holding and processing PLUS loan checks. However, the changes in this area are required by federal statute and may offset financial losses to schools by eliminating cases in which parents received PLUS loans but did not apply the proceeds to school charges. In addition, the new regulations may impose additional costs upon schools by disallowing late certification of loans in cases in which the borrower has left school and, in the case of loans through the Lender of Last Resort, after the loan period has ended. However, the changes were necessary due to changes in federal regulations which prohibit disbursement of loans that are certified after the borrower leaves school or the loan period is ended.

Costs to Lenders: The reduction of lender due diligence requirements in skiptracing and in endorser due diligence should represent a savings to lenders by reducing lender operating costs and reducing the lender's risk of losing the loan guarantee. However, the regulations reduce interest earnings on claims by paying lenders no more interest than is reinsured by the federal government. This change responds to changes in federal regulations which reduce interest for guarantor's claim review from a maximum of 90 days to a maximum of 60 days. For the average claim of \$2,800, the 30 days interest represents a cost of \$18.41. The SEAA expects to pay approximately 20,715 claims in state fiscal year 1993. Based on this figure, the total cost of changes in interest payments would be approximately \$381,350 per year.

Proposed Regulations

Summary:

These regulations incorporate changes to federal statute and regulations, delete some lender due diligence requirements and respond to changes in federal interest reimbursement.

VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs Under Title IV, Part B of the Higher Education Act of 1965 as amended.

PART I. DEFINITIONS.

§ 1.1. The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Abbreviated due diligence" means a series of collection activities as described in U.S. Department of Education bulletin 88-G-138, Section (E) issued on March 11, 1988 34 CFR 682, Appendix D .

"Administrative hold" means the postponement of guarantee processing for applications from a given school or lender.

"Bankruptcy" means the judicial action to declare a person insolvent and take his assets, if any, under court administration.

"Borrower" means a student or parent to whom a federal Stafford, federal PLUS or federal SLS loan has been made.

"Capitalization of interest" means the addition of accrued interest to the principal balance of a loan to form a new principal balance.

"Comaker" means one of two independent signers on a federal PLUS promissory note or repayment agreement who are jointly and individually responsible for repayment. Comakers shall be treated as borrowers in all due diligence activities.

"Consolidation" means the aggregation of federal consolidation loan program which combines multiple loans into a single Title IV, Part B loan.

"Default" means a condition of delinquency that persists for at least 180 days, or for 240 days in the case of quarterly-billed loans.

"Deferment" means postponement of ~~conversion to repayment status or postponement of installment payments~~ for reasons authorized by statute.

"Delinquency" means the failure to make an installment payment when due, failure to comply with other terms of the note, or failure to make an interest payment when

due, when the borrower and the lender have previously agreed to a set interest repayment schedule.

"Disbursement" means the issuance of proceeds of a student loan by a lender or its agent.

"Due diligence" means minimum reasonable care and diligence in processing, making, servicing, and collecting loans as specified by the U.S. Department of Education, federal and state statute and by the State Education Assistance Authority.

"Edvantage" means the program established by the SEAA that guarantees long-term, variable interest loans to students, their families and other interested parties to help them meet the cost of higher education.

"Endorser" means a person who agrees to share the maker's liability on a note by signing the note or repayment agreement.

"Forbearance" means a temporary suspension of repayment of interest or principal or both, ~~or the~~ acceptance of payments less than the statutory minimum payment, or allowing the borrower an extension of time for making payment on terms agreed upon in writing by the lender and the borrower.

"Grace period" means a single continuous period between the date that the borrower ceases at least half-time studies at an eligible school and the time when the loan enters an active the repayment period.

"Guarantee" means the SEAA's legal obligation to repay the holder the outstanding principal balance plus accrued interest in case of a duly filed claim for default, bankruptcy, total and permanent disability, or death of the borrower or the death of the student on whose behalf a federal PLUS loan was made .

"Guarantee fee" means the fee paid to the SEAA in consideration for its guarantee.

"Interest" means the charge made to the borrower for the use of a lender's money.

"Interest benefits" means the payment of interest on behalf of a qualifying federal Stafford loan borrower by the U.S. Department of Education while the borrower is in school, in grace, or in a period of authorized deferment.

"Lender" means any financial institution or qualifying school meeting the eligibility requirements of the U.S. Department of Education and having a participation agreement with the SEAA.

"Limit" means the authority of the SEAA to limit school and lender loan volume or numbers of loans in accordance with 34 CFR 668 Subpart G and VR 275-01-2.

"Non-Virginia resident" means any loan applicant who

Proposed Regulations

does not indicate Virginia residency on an application for a loan or does not indicate a permanent home address in the Commonwealth of Virginia.

"Non-Virginia proprietary school" means any school that has an assigned OE number that is registered by the U.S. Department of Education in a state other than Virginia, and meets one of the following criteria:

1. Is not classified by the Internal Revenue Service as a tax exempt entity, or
2. Has been defined by the U.S. Department of Education as a proprietary school or as a vocational school.

"OE number" means the identification number assigned by the U.S. Department of Education upon its approval of eligibility for a participating school or lender.

"Participation agreement" means the contract setting forth the rights and responsibilities of the lender and the SEAA.

"Permanent and total disability" means the inability to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death.

"PLUS" means the *federal PLUS loan* program established under Title IV, Part B of the Higher Education Act that authorizes long-term low interest loans available to parents of dependent undergraduate ; ~~graduate and professional~~ students, to help them meet the cost of education.

"Repayment period" means the period of time from the day following the end of the grace period if any, to the time a loan is paid in full or is cancelled due to default or the borrower's ~~death~~, total and permanent disability, or discharge in bankruptcy , ~~or the borrower's or student's death~~ .

"Satisfactory repayment arrangement" means a schedule agreed upon by the SEAA on a case-by-case basis to repay a defaulted loan in the shortest time possible according to the borrower's financial ability to repay the loan.

"School" means any school approved by the U.S. Department of Education for participation in the Title IV, Part B programs.

"SLS" means the *federal SLS loan* program established under Title IV, Part B of the Higher Education Act that authorizes long-term low-interest loans available to independent undergraduate, graduate and professional students, and to certain dependent undergraduate students, to help them meet the cost of education.

"Stafford" loan means the *federal Stafford loan* program

established under Title IV, Part B of the Higher Education Act that makes long-term low-interest subsidized *and unsubsidized* loans available to undergraduate, graduate and professional students to help them meet the cost of education.

"State Education Assistance Authority (SEAA)" means the designated guarantor for Title IV, Part B loans in the Commonwealth of Virginia.

"Suspend" means the authority of the SEAA to temporarily withdraw school and lender program participation in accordance with 34 CFR 668 Subpart G and VR 275-01-2.

"Terminate" means the authority of the SEAA to cease school and lender program participation in accordance with 34 CFR 668 Subpart G and VR 275-01-2.

"Title IV, Part B" means that portion of the federal Higher Education Act authorizing federally-guaranteed student loans, including *federal Stafford, federal PLUS, federal SLS and federal consolidation* loans.

PART II. PARTICIPATION.

§ 2.1. Borrower eligibility.

A. Requirements.

In order to be eligible for a Virginia Title IV, Part B loan, the student/parent borrower shall meet all of the federal eligibility requirements as well as the following criteria:

1. For a repeat borrower, unless he has borrowed less than the annual maximum, ~~seven months~~ *30 weeks* shall have elapsed between the first day of the previous loan period and the first day of the loan period, for any subsequent application ~~of the student for whom the proceeds are being borrowed shall have advanced to a higher grade level~~ .

2. Neither borrower nor comaker nor endorser may be in default on any previous Title IV, Part B or Edvantage loans; however, a borrower who has defaulted and has since made ~~full restitution to the SEAA including any costs incurred by the SEAA in its collection effort at least six consecutive monthly payments under satisfactory repayment arrangements~~ is considered eligible.

3. The status of a student applying for a ~~Stafford or PLUS Title IV, Part B~~ loan will be reviewed for the ~~seven-month~~ *30-week* time lapse from the first day of the previous loan period ; ~~or grade level progression~~, on the basis of all previous SEAA-guaranteed loans made for or by that student. ~~The status of a student applying for a SLS loan will be reviewed for the one academic year or seven-month time lapse from the~~

Proposed Regulations

~~first day of the previous loan period; on the basis of all previous SEAA-guaranteed loans made for or by that student.~~

4. Non-Virginia resident borrowers attending non-Virginia proprietary schools are not eligible to receive SEAA-guaranteed loans.

B. Lender of last resort.

Eligible Stafford loan borrowers who are denied access to loans by two or more eligible lenders may submit loan applications to the Lender of Last Resort program. Borrower applications submitted to the Lender of Last Resort program must pass a credit check and borrowers must complete a debt-management counseling session with the SEAA or its designee.

C. Rights.

Discrimination on the basis of race, creed, color, sex, age, national origin, marital status, or physically handicapped condition is prohibited in any loan program using the SEAA guarantee.

§ 2.2. Lender participation.

A. Requirements.

A lender may participate in the Title IV, Part B program in Virginia by executing a participation agreement with the SEAA. Lenders may participate in any or all programs.

B. Limitation/suspension/termination.

The SEAA reserves the right to limit, suspend, or terminate the participation of a lender in Title IV, Part B programs in Virginia under terms consistent with the regulations of the SEAA and state and federal law.

§ 2.3. School participation.

A. Requirements.

Any school approved by the U.S. Department of Education for participation in Title IV, Part B programs is eligible for the Virginia Title IV, Part B programs. Summer school courses are eligible. Correspondence courses for which there is not a residential component, and home study courses are not eligible.

B. Foreign schools.

Applications and correspondence regarding loans for students ~~and PLUS borrowers~~ attending foreign schools shall be completed in English and all sums shall be stated in U.S. dollars.

C. Limitation/suspension/termination.

The SEAA reserves the right to limit, suspend, or terminate the participation of a school in the Virginia Title IV, Part B programs under terms consistent with the regulations of the SEAA and state and federal law.

PART III. LOAN PROCESS.

§ 3.1. Lender responsibilities.

A. Due diligence.

In making, processing, servicing and collecting Title IV, Part B loans, the lender shall exercise due diligence as outlined in 34 CFR § 682. In addition, the lender shall: *SEAA requires lenders to request preclaims and supplemental preclaims assistance on a schedule specified by the agency .*

1. ~~Mail delinquency letters to delinquent borrowers for each delinquency cycle regardless of whether telephone contact is established with the borrower.~~

2. ~~Exercise due diligence with respect to endorsers by performing the following activities:~~

a. ~~31 through 60 days delinquent: The lender shall notify the endorser, in writing, of the borrower's delinquency and the endorser's secondary responsibility for repayment.~~

b. ~~60 through 90 days delinquent: The SEAA may require the lender to request preclaims assistance during this period.~~

c. ~~91 through 150 days delinquent: During each 30-day period comprising this period, the lender shall send at least two forceful collection letters and attempt to contact the endorser by telephone to cure the delinquency. The letters shall also warn the endorser that, if the delinquency is not cured, the lender will assign the loan to the SEAA, which in turn will report the default to a credit bureau, thereby damaging the endorser's credit rating, and may bring suit against both the borrower and endorser to compel repayment of the loan.~~

d. ~~120 to 270 days delinquent: The SEAA may require the lender to request supplemental preclaims assistance during this period.~~

e. ~~151 through 180 days delinquent: During this period the lender shall send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to all national credit bureaus. The lender shall allow the endorser at least 30 days to respond to the final demand letter and to make payments sufficient to bring the loan out of default before filing a default claim with the SEAA or reporting the default to a credit bureau.~~

Proposed Regulations

3. Exceptions to telephone requirements. A lender need not attempt to contact by telephone any borrower:

a. Who is incarcerated;

b. Who is 150 or more days delinquent following the lender's receipt of a payment on the loan, a dishonored check received from the drawee as a payment on the loan or the expiration of an authorized deferment or forbearance.

B. Skip tracing.

The lender shall initiate skip tracing efforts during the enrollment, grace or repayment period within 10 days of receipt of information that the borrower's, comaker's or endorser's address or telephone number is invalid. These efforts shall include but not be limited to (i) contacting endorser, (ii) relatives, (iii) references, (iv) the post office, (v) telephone directory assistance, (vi) credit bureau organizations, (vii) creditors, and (viii) the borrower's last educational institution of record. In addition, for loans for which the lender receives indication of an invalid telephone number or address on or after January 1, 1993, the lender shall perform the following:

1. 1-30 days after learning that an address or telephone number is invalid, the lender shall attempt to locate the address and phone number using at least the skip tracing methods described in this section. These efforts must be completed within 30 days of receiving indication that the address or phone number is invalid.

2. In each 90-day period after the initial skiptracing efforts described in this section, the lender shall make at least one follow-up attempt during each of these periods to locate the borrower's, comaker's or endorser's current address. During each period the lender shall make at least one attempt to locate the borrower's, comaker's or endorser's telephone number through directory assistance.

3. In the event that the loan is delinquent or becomes delinquent during the lender's efforts to locate a valid address or phone number, the lender must conduct skiptracing efforts during each 90-day period following the initial skiptracing efforts that are as comprehensive as those required during the initial 30-day period.

4. If the lender obtains a current address or telephone number before the date of default, the lender shall resume collection activities designated for the appropriate delinquency period.

5. If the lender obtains a current address after the 150th day of delinquency (210th day for loans billed quarterly), but prior to filing the default claim, the lender shall send the borrower, endorser and comaker

a final demand letter and allow 30 days to respond before filing a default claim.

C. Quarterly-billed loans.

Due diligence requirements for quarterly-billed loans are as follows:

1. 1 - 15 days delinquent: Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

2. 16 - 120 days delinquent: Unless exempted under subdivision 7 of this subsection, the lender during this period shall engage in at least two diligent efforts to contact the borrower by telephone and send at least two collection letters urging the borrower to cure the delinquency.

3. 121 - 240 days delinquent: Unless exempted under subdivision 7 of this subsection, the lender during this period shall engage in at least two diligent efforts to contact the borrower by telephone and send at least two collection letters urging the borrower to cure the delinquency and warning the borrower that if the delinquency is not cured, the lender will assign the loan to the SEAA who, in turn, will report the default to all national credit bureaus, and that the agency may bring suit against the borrower to compel repayment of the loan.

4. 110 - 130 days delinquent: The lender shall request preclaim assistance from the SEAA.

5. At no point during any period may the lender permit the occurrence of a gap in collection activity, as defined in federal regulations of more than 45 days (60 days in the case of a transfer).

6. Final demand: On or after the 210th day of delinquency, the lender shall send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender shall allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and make payments sufficient to bring the loan current before filing a default claim on the loan.

7. Exceptions to telephone requirements. A lender need not attempt to contact by telephone any borrower:

Proposed Regulations

a. Who is incarcerated;

b. Who is 150 or more days delinquent following the lender's receipt of a payment on the loan, a dishonored check received from the drawee as a payment on the loan or the expiration of an authorized deferment or forbearance.

D. B. Disbursement.

1. Stafford and SLS Title IV, Part B loan proceeds shall be disbursed in a check or checks made copayable to the borrower and the school, shall include the borrower's social security number, and shall be mailed to the financial aid office of the school named on the application.

2. PLUS loan proceeds shall be disbursed in a check payable to the parent, and shall be mailed to the parent's permanent address indicated on the application. PLUS disbursements may be made copayable to the parent and the school indicated on the loan application at the agreement of the school and lender. In these cases, checks shall indicate the student's name and Social Security number and, unless authorized by the promissory note, the lender must retain in its file the borrower's authorization to make the check copayable, which indicates the student's name and Social Security number.

3. Loan proceeds for a student attending a foreign school shall be made payable to the borrower and mailed to the borrower's permanent address indicated on the application.

4. Loan proceeds may be disbursed by other funds transfer methods approved by the SEAA and the U.S. Department of Education.

§ 3.2. School responsibilities.

A. General.

The school shall reply promptly to inquiries made by the SEAA or the lender concerning student borrowers. The school shall return the Student Status Confirmation Report to the SEAA within 30 days of its receipt. The SEAA reserves the right to place an administrative hold on institutions not complying with this requirement.

B. Certification.

1. The school shall certify the loan application no later than the last day of the loan period indicated on the application.

2. In the case of a loan processed electronically, the school must transmit the school certification data on or before the last day of the loan period.

3. The SEAA must have received a paper

application/promissory note on or before the 30th day following the last day of the enrollment period indicated on the application, or the student's last date of attendance if the enrollment period was not completed. However, applications through the Lender of Last Resort program as described in § 2-1 B must be received on or before the 60th day following the last day of the loan period indicated on the application.

4. The certification of the financial aid officer's own loan application, the application of a spouse or dependent of a financial aid officer or an application where conflict of interest exists, is not sufficient. In any of these cases, the application shall be accompanied by certification of the immediate supervisor of the financial aid officer.

PART IV. ACTIVE LOAN.

§ 4.1. Guarantee fee.

A. The SEAA schedule of guarantee fees on Stafford, SLS and PLUS loans shall be set from time to time by the SEAA Board of Directors, subject to any limits and conditions set forth in federal regulations.

B. A loan cannot be sold or transferred until the guarantee fee has been paid in full.

C. Although the SEAA is not obliged to return any fee, it may refund a guarantee fee at the request of the lender when a loan is cancelled before disbursement, or when the school returns the funds by the 120th day following disbursement.

D. Lenders who wish to reinstate a cancelled guarantee six months or later after a cancellation may be required to pay a reinstatement fee to the SEAA in addition to the guarantee fee. The amount of the reinstatement fee shall be set from time to time by the SEAA Board of Directors. The SEAA will not charge a reinstatement fee in cases in which the guarantee was cancelled as a result of SEAA error.

§ 4.2. Capitalization of interest.

A. Capitalization.

1. Before resorting to capitalization of interest in the case of a Stafford loan forbearance, the lender shall first make every effort to get the borrower (or endorser, where applicable) to make full payment of interest due, or if that is not possible, payment of interest as it accrues.

2. Except in the case of delinquent SLS loans, the borrower must agree in writing to any capitalization of interest.

3. During periods of forbearance or deferment for which interest is to be capitalized, the lender shall contact the borrower at least quarterly to remind him of the obligation to repay the loan.

B. Guarantee on interest.

The SEAA will guarantee capitalized interest, and the interest accruing therefrom, under the following conditions, and where the lender has exercised due diligence:

1. The SEAA will pay interest on those loans not eligible for interest benefits where interest has accrued and has been capitalized during the in-school and grace periods, and during any eligible periods of deferment or forbearance.

2. The SEAA will pay interest that has accrued during the period from the date the first repayment installment was required until it was made (as in the case of the borrower's unanticipated early departure from school).

3. The SEAA will pay interest that has not been paid during a period of forbearance, or where the lender and the borrower agree, in writing where required, to accrue and capitalize the interest.

§ 4.3. Repayment.

A. Minimum loan payment.

Except in the case of forbearance, any exception to federally established minimum loan payments must receive SEAA approval in advance.

B. Repayment forms.

The SEAA must approve the use of repayment instruments other than the SEAA repayment agreement furnished to lenders.

C. Consolidation.

The note(s) for any loans consolidated shall be marked "paid by renewal" and retained in the borrower's file.

§ 4.4. Forbearance.

A. Eligibility.

The SEAA reserves the right to require lenders to receive advance approval of forbearances and to disallow such forbearance.

B. Duration.

Total forbearance is limited to a maximum of 24 36 months, except:

1. In the case of a period of school enrollment the

lender may grant a forbearance until the time the borrower has completed his studies at a nonparticipating school.

2. In the case of a late conversion to repayment or in cases in which the lender learns that a borrower is no longer eligible for a deferment earlier granted, the lender may grant a forbearance through the time at which he learns of the event which disqualifies the loan for grace or deferment plus a reasonable period for placing the loan into active repayment status.

3. In the case in which a lender places a loan into administrative forbearance during the automatic stay period during bankruptcy proceedings.

1. Conditions stated in 34 CFR 682.211 (f) and (g) do not count against the borrowers total forbearance eligibility.

4. 2. In addition, lenders may grant a maximum of nine months forbearances in order to allow loans ineligible for interest benefits to mature at the same time as loans qualifying for interest benefits.

C. Renewal.

Lenders shall not renew a forbearance in which the borrower owes past due interest. In such cases, the borrower must request, in writing, where required, that outstanding interest be capitalized or must pay the interest charges before any subsequent forbearance is granted by the lender.

PART V. CLAIMS.

§ 5.1. Death claims.

To file a claim arising from the death of the borrower, the lender shall complete and send to the SEAA the appropriate SEAA form(s), a certified copy of the death certificate or similar verifiable proof, the promissory note(s) and any signed repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application(s) in the cases of loans made without a combined application/note, a collection history and any support documents the lender may be able to furnish. The lender must submit the claim within 60 days of receiving verifiable proof that the borrower has died.

§ 5.2. Total and permanent disability claims.

To file a claim arising from the total and permanent disability of the borrower, the lender shall complete and send to the SEAA the appropriate SEAA form(s), the completed federal form(s), signed by a qualified physician (either an M.D. or D.O.), the promissory note(s) and any

Proposed Regulations

signed repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application(s) in the case of loans made without a combined application/note, a *collection history* and any support documents the lender may be able to furnish. The lender must submit the claim within 60 days of determining that the borrower has been certified totally and permanently disabled.

§ 5.3. Default claims.

To file a claim in the event of default, the lender shall complete and send to the SEAA the appropriate SEAA form(s). The default claim shall include the lenders proof that due diligence requirements have been met, the promissory note(s) and any *signed* repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application in cases of loans made without a combined application/note, a *collection history* and any support documents the lender may be able to furnish.

§ 5.4. Bankruptcy claims.

A. Lender responsibilities.

The lender shall determine that a bankruptcy petition has been filed when the lender receives the Notice of First Meeting of Creditors in which the student loan debt is listed. The lender shall not attempt to collect the loan and shall file a proof of claim with the bankruptcy court within 30 days of the receipt of the Notice of First Meeting of Creditors. The lender shall determine if the loan has been in repayment for more than seven years, exclusive of any deferment or forbearance period(s), on the date the lender receives the Notice of First Meeting of Creditors and the lender shall determine if the borrower has filed a Petition for Undue Hardship.

1. The lender shall file a Chapter 7 bankruptcy claim within 30 days of receipt of the Notice of First Meeting of Creditors if the loan has been in repayment for more than seven years.

2. The lender shall file a Chapter 7 bankruptcy claim within 10 days of receiving notification that the borrower filed a Petition for Undue Hardship if the loan has been in repayment for less than seven years.

3. The lender shall hold the loan in an administrative forbearance status until the Chapter 7 bankruptcy is concluded if the loan has been in repayment for less than seven years and no Petition for Undue Hardship was filed. When the bankruptcy action is concluded, the loan shall resume the same status it was in prior to the time the bankruptcy action was filed.

4. The lender shall file a bankruptcy claim within 30 days of receipt of a notice that a Chapter 13 bankruptcy petition has been filed by the borrower.

5. If a loan was obtained with a cosigner, and only one party has the obligation to repay the loan discharged in bankruptcy, the other remains obligated to repay the loan. In such cases, the lender shall not submit a bankruptcy claim to the SEAA and shall attempt to collect the loan from the other borrower. If the loan was obtained with an endorser and the borrower's obligation to repay the loan is discharged through bankruptcy, the endorser is not obligated to repay the loan. If the endorser's obligation to repay the loan is discharged through bankruptcy, the borrower remains obligated to repay the loan.

When receiving a Notice of First Meeting of Creditors, the lender shall handle the loan as described by the U.S. Department of Education in 34 CFR 682.402, 682.511 and other federal guidance.

6. In addition, in the event that the lender receives notice of an adversary proceeding after filing the claim, or in the event that the lender is directed by the court to file a proof of claim after filing the claim with the guarantor, the lender shall forward notice of the hearing to the SEAA Default Collections department by telephone or facsimile within five business days.

B. Documentation.

To file a claim for a qualifying bankruptcy the lender shall complete and send to the SEAA the appropriate completed SEAA form, the notice of bankruptcy, written evidence of the lender's efforts to determine if the borrower filed a hardship petition, an assignment to the guarantee agency of the lenders proof of claim, the promissory note(s) and any *signed* repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application in cases of loans made without a combined application/note, a *collection history*, and any support documents the lender may be able to furnish, as well as any other information that may help the SEAA form the basis for an objection or an exception to the bankruptcy discharge.

§ 5.5. Payment of interest on claims.

A. Default claims (monthly/quarterly).

The SEAA will pay interest for a maximum of 360/420 330/390 days in the case of a qualifying default claim. The allowable interest includes up to 270/330 days for the lender to prepare and submit a qualifying default claim and up to 90 60 days for the SEAA's review of the claim and payment processing. Claim interest payment may not exceed federal reinsurance eligibility by more than 30 days .

Proposed Regulations

B. Death and disability claims.

The SEAA will pay interest for no more than ~~150~~ 120 days after the date on which the lender determines that the borrower has been certified totally and permanently disabled or that the borrower has died. Claim interest payment may not exceed federal reinsurance eligibility by more than 30 days.

C. Bankruptcy claims.

The SEAA will pay interest for no more than ~~120~~ 90 days after the date on which a lender receives notice of the first meeting of creditors for a qualifying Chapter 7 bankruptcy or a Chapter 13 bankruptcy. The SEAA will pay interest for no more than ~~100~~ 70 days after the date on which the lender determines that the borrower has filed a Petition for Undue Hardship in the case of a Chapter 7 bankruptcy. Claim interest payment may not exceed federal reinsurance eligibility by more than 30 days. *This limitation on claim interest does not include delinquent interest due at the time the borrower filed bankruptcy.*

D. Claims returned to lender.

No interest is paid for the period of time during which an incomplete claim has been returned to the lender. For claims which are first rejected on or after January 1, 1993, in the event that the lender believes a claim has been returned in error, the lender can appeal to the SEAA for the payment of interest during the return period, not to exceed 30 days of interest. In the case of qualifying claims submitted under subdivision 2 of § 5.6 for which abbreviated due diligence is required, the SEAA will pay no more interest than is reinsured by the federal government.

§ 5.6. Return of claims for inadequate documentation.

For claims which are first rejected on or after January 1, 1993, lenders must observe the following:

1. Lenders must resubmit returned claims within 60 days of the date the claim was returned by the SEAA.
2. Lenders may not resubmit more than once a claim that has been returned to the lender for inadequate documentation unless the lender has performed abbreviated due diligence and provides all required documentation. This provision does not apply if the claim was returned as a result of SEAA error.

§ 5.7. Repurchase and reclaim.

A. If the SEAA determines that a claim has been paid in error or, in the case of a bankruptcy claim in which a hardship petition has been filed, the court determines the loan to be nondischargeable, the SEAA may require the lender to repurchase the loan.

B. If a lender determines that a claim has been submitted in error, the lender may reclaim the loan or may repurchase the loan if the claim has been paid.

PART VI. ASSIGNMENT TO SERVICER OR SECONDARY MARKET.

§ 6.1. Servicing.

The lender may negotiate the servicing of loans under this program with a servicing agency. The servicer will be regarded as the lender's agent, and the lender will continue to be bound by the terms of these regulations.

§ 6.2. Secondary market.

The lender may negotiate the sale of loans under this program to a secondary market. No loan may be sold to any entity that is not party to a participation agreement with the SEAA except with the written permission of the SEAA. The lender or the secondary market shall notify the SEAA promptly of the assignment of any loans to a secondary market.

VA.R. Doc. No. R94-16; Filed September 15, 1993, 3:10 p.m.

BOARD FOR GEOLOGY

Title of Regulation: VR 335-01-1. Public Participation Guidelines (REPEALING).

Title of Regulations: VR 335-01-1:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1402 of the Code of Virginia.

Public Hearing Date: N/A — Written comments may be submitted until December 20, 1993.

(See Calendar of Events section for additional information)

Basis: The statutory authority for the Board for Geology to promulgate the Public Participation Guidelines is found in § 54.1-1402 of the Code of Virginia. The board is empowered to promulgate regulations setting standards for initial licensure, continuing licensure and conduct standards for geologists who voluntarily decide to obtain state certification.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process Act (APA) and the revisions to the APA made by the 1993 Virginia General Assembly by establishing procedures to be followed by the board in soliciting, receiving and considering public comment.

Substance: The proposed Board for Geology Public Participation Guidelines contain the same language as the

Proposed Regulations

emergency guidelines, which are currently in effect. Therefore, there is no change from the current status of the law.

Issues: The issues of the proposed PPG's are such that the public has the advantage of participating in the development of the geology certification regulations. With the participation of the public, they will become more familiar with the contents and expectations of the certification regulations. The advantage to the agency is such that with public knowledge of the regulations, the agency should save considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed Public Participation Guidelines affect approximately 750 individuals certified as geologist.

Since the proposed public participation guidelines are identical to the current emergency public participation guidelines, there will be no additional cost to the agency in the implementation and compliance of this regulation.

Summary:

The Board for Geology Public Participation Guidelines (PPG's) mandate public participation in the promulgation process of geology certification. The Department of Professional and Occupational Regulation will maintain a mailing list to notify persons and organizations of intended regulatory action. The department will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period" and a notice that final regulations have been adopted. The PPG's will outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days and will state whether or not a public hearing will be held. The PPG's give specific instances on when the department must hold a comment period and when the department must reevaluate the regulations. The PPG's establish the procedures for formulation and adoption of regulations and the procedures to be taken when substantial changes have been made prior to final adoption of the regulations. The use of and input from advisory committees to formulate regulations are established in the PPG's. The PPG's specify what meetings and notices will be published in The Virginia Register.

VR 335-01-1:1. Public Participation Guidelines.

§ 1. Mailing list.

The Board for Geology (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on the proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on the existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of a regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of the proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession;
2. Industry, professional and trade associations' mailing lists; and
3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1, 2, 3, 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. Nos. R94-58 and R94-59; Filed September 29, 1993, 11:57 a.m.

VIRGINIA WORKERS' COMPENSATION COMMISSION

Reprint

EDITOR'S NOTE: The following proposed rules filed by the Virginia Workers' Compensation Commission were published in 9:19 VA.R. 3353-3361 June 14, 1993, and are being reprinted with minor changes at the request of the Commission.

REGISTRAR'S NOTICE: The Virginia Workers' Compensation Commission is exempt from the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, it is required to publish proposed and final regulations in accordance with § 9-6.14:22 of the Code of Virginia.

Title of Regulation: VR 405-01-06. Proposed Rules of the Virginia Workers' Compensation Commission.

Statutory Authority: § 65.2-210 of the Code of Virginia.

VR 405-01-06. Proposed Rules of the Virginia Workers' Compensation Commission. (Proposed to be effective.....)

These rules are issued to provide procedures to identify and resolve disputed issues promptly through informal dispute resolution or hearing.

The following words and terms, when used in these rules, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Virginia Workers' Compensation Act.

"Commission" means the Virginia Workers' Compensation Commission.

"Employer" includes the employer's insurance carrier unless the context otherwise requires.

I. Prehearing Procedures.

Rule 1. Employee's original claim for benefits; change in condition; employer applications.

A. Employee's original claim for benefits. An employee's original claim for benefits shall be filed under applicable statutes of limitation.

1. An original claim for benefits shall be in writing, signed and should set forth the following:

- a. Employee's name and address;
- b. Employer's name and address;
- c. Date of accident or date of communication of

Proposed Regulations

occupational disease;

d. Nature of injury or occupational disease;

e. Benefits sought: temporary total, temporary partial, permanent total, permanent partial or medical benefits;

f. Periods of disability, if appropriate.

2. An original claim will not be docketed until medical evidence to support the claim is filed.

B. Employee's claim on the ground of change in condition or other relief.

1. A change in condition claim must be in writing and state the change in condition relied upon. A copy of the claim should be sent to the employer.

2. Additional compensation may not be awarded more than 90 days before the filing of the claim with the commission. Requests for cost of living supplements are not subject to this limitation.

3. A claim for change in condition will not be docketed until medical evidence is filed to support the change in condition.

4. Any other claim shall specify the relief sought and will not be docketed until supporting evidence is received.

C. Employer's application for hearing.

1. An employer's application for hearing shall be in writing and shall state the grounds and the relief sought. At the time the application is filed with the commission, a copy of the application and supporting documentation shall be sent to the employee and a copy to the employee's attorney, if represented.

2. Each change in condition application filed by an employer under § 65.2-708 of the Code of Virginia shall:

a. Be in writing;

b. Be under oath;

c. State the grounds for relief; and

d. State the date for which compensation was last paid.

3. Compensation shall be paid through the date the application was filed, unless:

a. The application alleges the employee returned to work, in which case payment shall be made to the date of the return to work.

b. The application alleges a refusal of selective employment or medical attention or examination, in which case payment shall be made to the date of the refusal or 14 days before filing, whichever is later.

c. The application alleges a failure to cooperate with vocational rehabilitation, in which case payment shall be made to the date the application is filed.

d. An employer files successive applications, in which case compensation shall be paid through the date required by the first application. If the first application is rejected, payment shall be made through the date required by the second application.

e. The same application asserts multiple allegations, in which case payment is determined by the allegation that allows the earliest termination date.

4. An employer may file a change in condition application while an award is suspended.

5. No change in condition application under § 65.2-708 of the Code of Virginia shall be accepted unless payments were made within two years from the date compensation was last paid pursuant to an award.

6. A change in condition application may be accepted and docketed when payment of compensation continues.

D. Acceptance or rejection.

1. After receipt, the commission shall review the claim or application for compliance with the Workers' Compensation Act and Rules of the Commission.

2. The commission may order the employer to advise whether the employee's claim is accepted or to provide reasons for denial.

a. Response to the order shall be considered a required report pursuant to § 65.2-902 of the Code of Virginia.

b. The employer's response to this order shall not be considered part of the hearing record.

3. If the employer's application is technically acceptable, the opposing party shall be permitted up to 15 days from the date the application was filed to present evidence in opposition to the application.

a. Pending acceptance or rejection of the application, the employer may suspend or modify compensation payments as of the date for which compensation was last paid.

b. If rejected, the commission shall advise the

employer of the reason for rejection and compensation shall be reinstated immediately.

c. If accepted, the application shall be referred:

- (1) For dispute resolution,
- (2) For decision on the record, or
- (3) For an evidentiary hearing.

E. Review of decision accepting or rejecting claim or application.

1. A review of a decision accepting or rejecting a change in condition claim or application shall be filed within 20 days from date of the decision. No oral argument is permitted.

2. The letter requesting a review should specify each determination of fact and law to which exception is taken. A copy of the request shall be sent to the opposing party.

3. The opposing party shall have five days from the date the review request is filed to provide a written response to the commission.

4. Only information contained in the file at the time of the original decision along with the review request and any response from the opposing party will be considered. Additional evidence will not be accepted.

5. If the rejection of the claim or application is affirmed on review, the penalty and interest provisions of §§ 65.2-524 and 65.2-707 of the Code of Virginia shall apply from the date the application was initially rejected.

Rule 2. Informal dispute resolution and decision on the record.

A. At the request of either party, or at the commission's direction, any case involving contested issues may be evaluated and referred for dispute resolution. Examples of limited issues often subject to prompt resolution are:

1. Average weekly wage;
2. Closed periods of disability;
3. Change in treating physician;
4. Contested medical issues including bills;
5. Permanent disability ratings;
6. Return to work;
7. Failure to report incarceration, change in address or return to work;

8. Attorney fee disputes;

9. Other issues which are ready for prompt determination.

B. 1. Informal dispute resolution. The commission will screen claims and applications for hearing. When it appears that a claim may be resolved by informal dispute resolution, the commission may refer the case to a commission representative who will schedule the parties for personal appearance or telephone conference during which the commission will attempt to identify disputed issues and to bring about resolution through agreement. Parties need not be represented by counsel. If agreement is reached it shall be reduced to writing and shall be binding.

2. Decision on the record. When it appears that there is no material dispute of fact as to any contested issue, determination should proceed on the record without formal hearing. After each party has been given the opportunity to file a written statement of the evidence supporting a claim or defense, the commission shall enter a decision on the record.

a. Written statements. When the commission determines that decision on the record is appropriate, the parties shall be given 20 days to submit written statements and evidence. Ten additional days shall be given to respond. For good cause shown additional time may be allowed. Copies of all written statements and evidence shall be furnished to the commission and all parties.

b. Review. Request for review of decision on the record shall proceed under § 65.2-705 of the Code of Virginia and Rule 9.

3. Referral to hearing docket. If it is determined that material issues of fact are in dispute or that oral testimony will be required, the case shall be referred to the docket for evidentiary hearing on those issues which are not agreed or determined by decision on the record.

Rule 3. Compromise settlement; lump sum payment.

A. A proposed compromise settlement shall be submitted to the commission in the form of a petition setting forth:

1. The matters in controversy;
2. The proposed terms of settlement;
3. The total of medical and indemnity payments made to date of submission;
4. The proposed method of payment;
5. Such other facts as will enable the commission to determine if approval serves the best interests of the

Proposed Regulations

claimant or the dependents.

B. The petition shall be signed by the claimant and, if represented, an attorney and by the other parties or their attorneys. An endorsing attorney must be licensed to practice in Virginia.

C. The petition shall be accompanied by:

1. A medical report stating the claimant's current condition and whether the injuries have stabilized;
2. An informational letter from the claimant or counsel stating whether the claimant is competent to manage the proceeds of the settlement and describing the plan for managing the proceeds;
3. A notarized affidavit attesting the claimant's understanding of and voluntary compliance with the terms of the settlement; and
4. A fee statement endorsed by the claimant and the claimant's attorney.

D. If the proposed settlement contemplates payment in a lump sum, the petition shall set forth in detail the facts relied upon to show that the best interests of the employee or the dependents will be served thereby.

If the proposed settlement contemplates an annuity, the petition shall state that the company issuing the annuity is rated A+ by A.M. Best & Company or comparable rating by another company and that in case of default, the employer or carrier shall remain responsible for payment.

Rule 4. Discovery.

A. *Scope and method.* The scope of discovery shall extend only to matters which are relevant to issues pending before the commission and which are not privileged. Discovery may be obtained by oral or written deposition, interrogatories to parties, production of documents or things, inspection of premises or other means of inquiry approved by the commission.

B. *Limiting discovery.* The commission may limit the frequency or extent of discovery if it is unreasonably cumulative, duplicative, expensive or if the request was not timely made. The commission will consider the nature and importance of the contested issues, limitations on the parties' resources and whether the information may be obtained more conveniently and economically from another source.

C. *Stipulation to discovery.* Except as specifically provided by these rules, the parties may by written stipulation agree to other methods of discovery or provide that depositions may be taken before any person, at any time or place, upon any notice and in any manner and when so taken may be used like other depositions.

D. *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement a response to include information thereafter acquired unless such information materially affects a prior response.

E. *Protective order.* Upon good cause shown, the commission may enter an order limiting discovery to protect a party, a witness, or other person from embarrassment, oppression, or undue burden or expense.

F. *Subpoenas.* A party requesting a subpoena for witness or subpoena duces tecum shall prepare the subpoena and submit it to the commission for insertion of return date and clerk certification; a check or money order for service fee, payable to the appropriate sheriff's office, shall accompany the request. The commission shall forward the subpoena and service fee to the designated sheriff's office, unless requested to do otherwise.

Subpoenaed records may be made returnable to the requesting party or, at the direction of the commission, to the clerk of the commission or to a regional office. If subpoenaed records contain medical reports they shall be filed with the commission pursuant to Rule 4(L).

Requests for subpoenas may be filed with the commission at Richmond or in the regional office assigned to hear the case. Requests not timely filed will not be honored except when authorized by the commission for good cause shown.

1. *Subpoenas for witnesses.* Requests should be filed at least 10 days prior to hearing.
2. *Subpoenas duces tecum.* Requests should be filed at least 15 days before hearing and the subpoena shall describe with particularity the materiality of the documents or articles to be produced.

All requests for subpoenas duces tecum shall be served on each counsel of record, or the unrepresented party, by delivering or mailing a copy to each on or before the day of filing. Each request shall have appended either acceptance of service or a certificate that copies were served in accordance with the law, showing the date of delivery or mailing.

G. *Depositions.* After a claim or application has been filed, any party may take the testimony of any person, including a party, by deposition upon oral examination or upon written questions.

The attendance of witnesses may be compelled by subpoena. The deposition of a party or physician may be taken without permission of the commission. Leave of the commission shall be obtained to take the deposition of any other persons. Depositions shall be taken in accordance with the requirements and limitations of the Rules of the Supreme Court of Virginia governing actions at law unless the parties stipulate to discovery as set forth in Rule 4 C,

supra.

For good cause shown the deposition of an attending panel physician may be ordered to be taken at the expense of the employer if the physician has not prepared and completed an Attending Physician's Report (Form 6) or has not otherwise prepared written reports which are sufficient to answer questions concerning injury, diagnosis, causation, disability and other matters not stipulated and deemed by the commission to be material to a claim or to a defense.

Upon timely application and, if deposition is deemed to be necessary for the proper adjudication of a claim or defense, the commission may compel the testimony of an attending physician.

H. Interrogatories to parties. After a claim or application has been filed, interrogatories limited to contested issues may be served by one party on another party without prior commission approval.

Answers to each interrogatory are to be filed within 21 days after service. Objections must be included with answers. If there is objection to an interrogatory and the party serving the interrogatory moves the commission for relief, the hearing officer shall enter an order resolving the issue, after giving the parties an opportunity to state their positions in writing.

No party shall serve upon any other party, at one time or cumulatively, more than 10 interrogatories, including all parts and subparts, without leave of the commission for good cause shown. Leave shall be timely requested in writing. Relevant interrogatories should be served promptly upon commencement of a contested claim.

It is not necessary to file interrogatories or answers with the commission unless they are the subject of a motion.

I. Request for admission. After a claim or application has been filed, a party may serve upon any other party a written request for the admission of the truth of any material matter.

Each request must be numbered and set forth separately. Copies of documents shall be served with the request unless they have been furnished or made available for inspection and copying.

An admission under this rule may be used only for providing evidence in the proceeding for which the request was made and shall not have force or effect with respect to any other claim or proceeding. An admission or denial must be offered in evidence to be made part of the record.

J. Production of wage information. If the average weekly wage is contested, the employer shall timely file a wage chart showing all wages earned by an employee in its employment for the term of employment, not to exceed

one year before the date of injury.

If an employee has earned wages in more than one employment, the employee shall have responsibility for filing information concerning wages earned in an employment other than the one in which claim for injury is made.

K. Production of medical records and reports. All medical reports received by any party shall be sent immediately to the opposing party. The original or legible copy shall be filed with the commission.

All reports and records of physicians and reports for medical care directed by physicians may be admitted in evidence as testimony by physicians or medical care providers. Upon timely motion, any party shall have the right to cross-examine the source of a medical document offered for admission in evidence.

L. Failure to make discovery; to produce documentary evidence; to comply with request for admission. A party, upon reasonable notice to other parties and all persons affected thereby, may request an order compelling discovery as follows:

A timely request in writing in the form of a motion to compel discovery may be made to the commission or to such regional office of the commission where an application is assigned to be heard.

Failure of a deponent to appear or to testify, failure of a party on whom interrogatories have been served to answer, failure of a party or other person to respond to a subpoena for production of documents or other materials, or failure to respond to a request for admission shall be the basis for an order addressing a request to compel compliance or for sanctions, or both.

M. Disposition of discovery material. Any discovery material not admitted in evidence and filed in the commission may be destroyed by the clerk of the commission after one year from entry of a final decision of the commission or appellate court.

Rule 5. Willful misconduct. If the employer intends to rely upon a defense under § 65.2-306 of the Act, it shall file with the commission no more than 45 days after the date of Notice of Referral of Application to Docket, a statement of its intent to make such defense together with a statement of the particular act or acts relied upon as showing willful misconduct. A copy shall be furnished to the employee or his attorney with the employer's Prehearing Statement.

Rule 6. Prehearing statement. Each party shall, within 45 days after the date of Notice of Referral of Application to Docket (Form...) file a Prehearing Statement (Form...) in accordance with the instructions on the statement. The Prehearing Statement shall be considered a required report subject to the provisions of § 65.2-902 of the Code

Proposed Regulations

of Virginia.

The Prehearing Statement shall contain information concerning claims, defenses, stipulations, average weekly wage, witnesses, including identification of medical reports and depositions to be relied upon at hearing, and exhibits to be offered at hearing.

All claims and defenses shall be identified in the Prehearing Statement. Any claim or defense not identified shall be considered at hearing only upon leave of the commission.

Rule 7. Enforcement of the Act and Rules of the Commission; sanctions. In addition to the statutory authority of the commission to levy fines and penalties and punish contempt, the commission may enforce its rules and the provisions of the Workers' Compensation Act upon motion of a party, or upon its own motion, after giving a party or other interested person the opportunity to be heard, by imposition of the following sanctions:

A. Rejection of pleading including, but not limited to, all or parts of claims and grounds of defense;

B. Exclusion of evidence from the record;

C. Dismissal of a claim or application;

D. Imposition of costs, including attorney fees, upon either the offending party or an attorney or both.

II. Hearing Procedure.

Rule 8. Evidentiary hearings. An evidentiary hearing by the commission shall be conducted as a judicial proceeding. All witnesses shall testify under oath and a record of the proceeding shall be made. Except for rules which the commission promulgates, it is not bound by statutory or common law rules of pleading or evidence nor by technical rules of practice.

The commission shall conduct hearings and make inquiry into the questions at issue to determine the substantial rights of the parties.

Hearsay evidence may be received. The party having the burden of proof shall have the right to open and close. Each party shall be allowed 20 minutes in which to present evidence unless prior arrangement is made through the commission to extend hearing time.

A. Continuances. The parties should be prepared to present evidence at the time and place scheduled for hearing.

A motion to continue will be granted only when it appears that material or irreparable harm may result if not granted.

B. Evidence. Stipulations to agreed facts shall be

included in the record. Each exhibit offered shall be marked and identified, and the record shall show whether it was admitted in evidence.

The parties shall specifically designate, by author, deponent and date, medical reports, records or depositions to be received in evidence. Those portions of a deposition to be included in the record must be specifically identified by page and line.

Only those medical reports, records or deposition portions designated by the parties or the commission may be admitted into evidence.

III. Posthearing Procedure.

Rule 9. Review by the commission.

A. Request for review. Any request for review of a decision or award of the commission shall be filed by a party in writing with the clerk of the commission within 20 days of the date of such decision or award.

The request for review should assign as error specific findings of fact and conclusions of law. Failure of a party to assign any specific error in its request for review may be deemed by the commission to be a waiver of that right.

A copy of the request for review shall be furnished to the opposing party. Upon request to the clerk, a party may obtain a copy of the hearing transcript subject to an appropriate charge.

B. Written statements. The commission will advise the parties of the schedule for filing brief written statements supporting their respective positions. The statements shall address all errors assigned, with particular reference to those portions of the record which support a party's position. The commission may, however, on its own motion, address any error and correct any decision on review if such action is considered to be necessary for just determination of the issues.

C. Additional testimony. No new evidence may be introduced by a party at the time of review except upon agreement of the parties.

Any petition for reopening of the case and taking of additional testimony will be favorably acted upon by the full commission only when it appears to the commission that such course is absolutely necessary and advisable and also when the party requesting the same is able to conform to the rules prevailing in the courts of this state for the introduction of after-discovered evidence.

A petition to reopen a case or to receive after-discovered evidence may be considered only upon request for review.

D. Oral argument. A party may request oral argument at

the time of application for review. Otherwise, the review shall proceed on the record.

If oral argument is requested and the commission considers it to be necessary or to be of probable benefit to the parties or to the commission in adjudicating the issues, the parties will be scheduled to present oral argument. Any party may request the commission to schedule argument by telephone conference by giving notice to the clerk of the commission and to opposing counsel at least five days before the scheduled date for argument.

Each side will be limited to no more than 15 minutes for presentation of oral argument.

If oral argument is requested and the requesting party fails to appear in person or by scheduled telephone conference, the commission will impose sanctions in the absence of good cause shown.

IV. General Rules.

Rule 10. Filing documents.

A. Agreements. All written agreements concerning payment or termination of compensation shall be filed with the commission immediately upon their execution.

B. Medical reports. The original or a legible copy of all medical reports received by an employer or an employee relating to a claim shall be filed immediately with the commission. A copy of all reports shall be furnished to the opposing party. All medical reports relevant to a claim shall be required reports subject to provisions of § 65.2-902 of the Code of Virginia. Failure by a party to file a medical report shall be grounds for imposing sanctions. Required reports shall also include:

1. Commission Form 6 or equivalent;
2. Attending physician's notes and reports;
3. Emergency room reports;
4. Operative notes;
5. Hospital admission and discharge summaries;
6. Cumulative progress notes; and
7. Return to work or disability slips.

A medical care provider attending an injured employee shall, upon request from an employer or an employee, furnish a copy of required reports, at no cost except for a nominal copying charge.

A medical care provider is entitled to a reasonable fee for preparation of a narrative report written in response to a request from a party if the report requires significant

professional research or preparation.

Rule 11. Cost of medical services. A claimant under an award shall not be liable for the cost of medical services causally related to the compensable injury by accident or occupational disease.

Rule 12. Award of attorney's fees under § 65.2-714 of the Code of Virginia.

A. Agreement between parties as to a fee. An attorney's fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if agreement is reached and the following is submitted to the commission:

1. An order, endorsed by counsel and the carrier or provider, identifying the amount of medical charges recovered and the agreed fee; and
2. Evidence that the claim was contested.

B. Parties fail to agree on a fee.

1. An attorney's fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if the parties cannot agree, upon filing a motion with the commission and submission of the following:

- a. Evidence that the claim was contested;
- b. A statement from counsel that prior to the filing of a request with the commission the attorney and carrier or provider made a reasonable good faith effort to resolve the matter;
- c. Evidence that the insurance carrier or health care provider was given reasonable notice that a motion for an award of such fee would be made;
- d. A statement including the name and address of each carrier or provider from whom the fee is requested, the amount of the medical charge recovered for each carrier or provider and the amount of the fee requested; and
- e. Certification that a copy of the motion has been sent to each carrier and health care provider identified.

2. If the request is referred to the evidentiary hearing docket, counsel must provide notice of the hearing to each carrier or provider. The notice shall state the amount of the medical charge recovered for the carrier or provider, the amount of the attorney's fee requested and the time and place of the hearing.

Rule 13. Employer responsibilities.

Proposed Regulations

A. *Proof of insurance coverage.* Every employer subject to the Act shall file with the commission proof of compliance with the insurance provisions (§§ 65.2-800 and 65.2-801) of the Act. A notice from the insurer (Form No. 45F) certifying this fact will be received as acceptable proof.

B. *Posting notices.* Every employer subject to the Act shall post and keep posted, conspicuously, in the plant, shop or place of business at a location frequented by employees, notice of compliance with the provisions of the Act. Such notice shall follow substantially the form prescribed by the commission. The commission will supply employers with printed notices upon request. Failure by an employer to give such notice to an employee may constitute waiver of the notice defense pursuant to § 65.2-600 of the Code of Virginia.

Rule 14. Self-insurance.

A. *The Commonwealth of Virginia, its municipalities and political subdivisions.* Permission for self-insurance will be granted by the commission to the Commonwealth and its political subdivisions and to Virginia municipalities upon application for certification, without submission of proof of financial ability and without deposit of bond or other security. However, the premium tax provided for in § 65.2-1006 of the Act shall be paid.

B. *Confidentiality of self-insurer information.* No record of any information concerning the solvency and financial ability of any employer acquired by a commissioner or his agent by virtue of his powers under the Act shall be subject to inspection; nor shall any information in any way acquired for such purposes by virtue of such powers be divulged by a commissioner or his agent, unless by order of the court, so long as said employer shall continue solvent and the compensation legally due from him, in accordance with provisions of the Act, shall continue to be paid.

Rule 15. Payment of compensation.

A. *Waiting period.* If the employee is not paid wages for the entire day on which the injury occurred, the seven-day waiting period prescribed by the Act shall include the day of injury regardless of the hour of the injury.

All days or parts of days when the injured employee is unable to earn a full day's wages, or is not paid a full day's wages, due to injury, shall be counted in computing the waiting period even though the days may not be consecutive.

B. *Direct payments.* All compensation due an injured employee or compensation awarded on account of death under the Act shall be paid directly to the beneficiary in accordance with the award. This ruling applies whether or not the employee is represented.

Compensation awarded shall be paid promptly and in

strict accordance with the award issued by the commission. When an award provides for an attorney fee, the employer shall pay the fee directly to the attorney unless there is alternative provision in the award.

C. *Payment without award.* The payment of compensation without award for a period of 60 days after the date of an alleged injury shall be deemed acceptance of that claim as compensable. Upon satisfactory proof of such payment, an award of compensation and medical expenses may be entered by the commission. Such award shall be subject to subsequent modification retroactively as conditions merit.

Rule 16. *X-ray evidence for coal workers' pneumoconiosis claims.* In any claim for first, second, or third stage pneumoconiosis under § 65.2-504 of the Code of Virginia, the employer and the employee each shall be limited to submission of not more than three medical interpretations (readings) of x-ray evidence without regard to the number of x-rays. For good cause shown, additional interpretations may be received as evidence if deemed necessary by the commission. Any party to a contested claim, or the parties upon agreement, may submit the x-ray evidence to the commission for interpretation by the Pulmonary Committee. If a party agrees to accept the x-ray reading of the Pulmonary Committee as the binding classification, the costs of evaluation shall be borne by the commission.

B. *Appointment of Pulmonary Committee.* The commission shall appoint a Pulmonary Committee to be composed of at least three qualified physicians certified as B readers under standards promulgated by the International Labour Organization (ILO).

Rule 17. *Pneumoconiosis table.* A table for conversion of medically-classified categories of pneumoconiosis (under ILO standards) into stages of pneumoconiosis shall be promulgated by the commission and information from the table shall be the basis for determining the amount of compensation due, if any, under § 65.2-504 of the Code of Virginia for coal workers' pneumoconiosis and under § 65.2-503 of the Code of Virginia for other pneumoconioses.

TABLE

Medical interpretations of radiographic evidence, for the purpose of conversion to stages under this table, shall be based upon the ILO 1980 International Classification of Radiographs of the Pneumoconioses.

First Stage: Category 1 and 2 p, s
 " 1 q, t

Second Stage: Category 3 p, s
 " 2 and 3 q, t
 " 1, 2 and 3 r, u

Third Stage: Category A, B and C

Rule 18. *Hearing loss table.*

Proposed Regulations

A table for determining compensable percentage of hearing loss shall be promulgated by the commission.

All determinations are to be made (i) without the use of a hearing aid; and (ii) with a pure-tone audiometer by air conduction alone.

Hearing loss in decibels is to be recorded at 500, 1,000, 2,000 and 3,000 cycles per second. The audiometer shall be calibrated to the ANSI 1969 standard.

The average decibel loss is to be translated into percentage of compensable hearing loss of each ear according to the following table:

Average Decibel Loss	Percent of Compensable Hearing Loss
27	.8
28	2.2
29	3.6
30	5
31	6.7
32	8.3
33	10
34	11.7
35	13.3
36	15
37	16.7
38	18.3
39	20
40	21.7
41	23.3
42	25
43	26.7
44	28.3
45	30
46	31.7
47	33.3
48	35
49	36.7
50	38.3
51	40
52	41.7
53	43.3
54	45
55	46.7
56	48.3
57	50
58	51.7
59	53.3
60	55
61	56.7
62	58.3
63	60
64	61.7
65	63.3
66	65
67	66.7
68	68.3

69	70
70	71.7
71	73.3
72	75
73	76.4
74	77.8
75	79.2
76	80.6
77	82
78	83.4
79	84.8
80	86.2
81	87.6
82	89
83	90.4
84	91.8
85	93.2
86	94.6
87	96
88	97.4
89	98.8
90 and over	100

No allowance for presbycusis is to be made

VA.R. Doc. No. R94-68; Filed September 29, 1993, 7:38 a.m.

DEPARTMENT OF PERSONNEL AND TRAINING

Title of Regulation: VR 525-01-1. Public Participation Guidelines.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until 3 p.m. on December 17, 1993.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations.

Purpose: The purpose of the proposed action is to adopt public participation guidelines for the Department of Personnel and Training (DPT) which ensure interested persons are able to comment on regulatory actions in a meaningful fashion during all phases of the regulatory process.

Substance: The guidelines provide that DPT will: develop mailing lists of interested persons; notify interested persons of proposed regulatory actions; brief appropriate advisory committees; provide a comment period; hold public meetings as appropriate; and follow other requirements of the Administrative Process Act (APA).

Issues: The department is not aware of any substantive

Proposed Regulations

issues that need to be resolved prior to adopting the proposed guidelines.

Estimated Impact: Adoption of the proposed Public Participation Guidelines should not impose any financial impact on the agency or the public.

Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines not only shall be utilized prior to the formation and drafting of the proposed regulation, but also shall be utilized during the formation, promulgation and final adoption of all regulations.

The purpose of the proposed action is to adopt public participation guidelines which ensure that interested persons are able to comment on regulatory actions in a meaningful fashion during all phases of the regulatory process.

VR 525-01-1. Public Participation Guidelines.

§ 1. Purpose and authority.

This regulation establishes public participation guidelines for soliciting input from interested parties in the formation, development and revision of regulations by the Department of Personnel and Training. These guidelines are required under § 9-6.14:7.1 of the Code of Virginia (Administrative Process Act). The guidelines do not apply to any regulation adopted on an emergency basis or to other regulations excluded from the operation of Article 2 of the Administrative Process Act under § 9-6.14:4.1 C of the Code of Virginia.

§ 2. Definitions.

The following words, when used in this regulation, shall have the following meanings unless the context clearly indicates otherwise:

“Department” means the Department of Personnel and Training.

“Director” means the Director of the Department of Personnel and Training.

“Person” means one or more individuals, or any association, organization, advisory council, or committee.

§ 3. Initiation of regulation development procedures.

A. Regulation development may be initiated at any time by the department.

B. Any person may petition the department to

promulgate new regulations, or to amend, add to, or repeal existing regulations. All petitions shall be considered and responded to within 90 days. The petition shall, at a minimum, contain the following information:

1. Name of petitioner;

2. Petitioner's mailing address and telephone number;

3. Petitioner's interest in the proposed action;

4. The recommended new regulation or addition, deletion or amendment to an existing regulation;

5. Statement of need and justification for the proposed action;

6. Statement of impact on the petitioner and other affected persons; and

7. Supporting documents, as applicable.

§ 4. Information dissemination.

A. The department shall prepare and maintain a general information mailing list to include members of its advisory committees, those persons who have indicated an interest in its activities, and those persons who the department believes are interested in its activities.

B. The department shall prepare a regulation development mailing list for each specific regulatory proceeding. The list will be comprised of members of advisory committees, persons from the general information mailing list who express an interest in the proceeding, and such other persons as the department believes to have an interest in the proceeding. This list will be maintained until the conclusion of each proceeding.

C. Persons will be added to the regulation development mailing list as requested, or at the request of the director.

D. The department shall brief all department advisory councils and committees on the proposed regulatory proceeding to determine if they or the various groups and interests they represent want to participate in the regulation development process.

E. At its discretion, the department may schedule public information meetings. If meetings are scheduled, the department shall mail notices of the meetings to persons on the regulation development mailing list and other persons the department determines appropriate. Notices shall include:

1. The subject of the proposed regulation;

2. A request for comments, including information regarding whether or not comments must be in writing, and information regarding the deadline for receiving comments; and

Proposed Regulations

3. The name, address and telephone number of staff persons to contact for further information.

§ 5. Public participation procedures.

A. The department shall issue a Notice of Intended Regulatory Action whenever it considers the adoption, amendment or repeal of any regulation. The notice shall include:

1. A brief statement as to the intent and need of the planned regulation.
2. A brief description of alternatives available, if any, to meet the need.
3. A request for comments on the intended regulatory action including any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the Notice of Intended Regulatory Action.

B. After identifying the need to change or adopt regulations, the department shall notify persons on the general information mailing list of the subject matter of the proposed regulation, and invite them to respond to the proposal. Persons indicating an interest in the proposed regulation shall be placed on the regulation development mailing list for that regulation.

C. Based on the level of interest shown, the department may request interested parties to submit written comments, concerns and suggestions relative to the proposed regulations. It may choose to schedule one or more public information meetings to provide opportunities for interested persons to submit data, views and comments. Notices of such meetings shall be mailed to persons on the regulation development mailing list and to any other persons the department determines appropriate. The degree to which the department consults with advisory committees and other interested groups and individuals will depend upon whether the proposed action is required by state or federal mandates, and the proposed regulation's:

1. Complexity;
2. Controversy;
3. Degree of substantive change; and
4. Impact on the department, other agencies, and employees.

D. After consideration of input from interested parties, the department shall prepare and submit a final draft of the proposed regulation to the Virginia Registrar of Regulations who will publish the proposed regulation and a "Notice of Comment Period" of at least 60 days in accordance with the Administrative Process Act.

E. The department shall send copies of the final draft proposed regulation to persons on its regulation development mailing list and to other persons who request it along with the following information:

1. A cover letter explaining deadlines for submitting formal public comments;
2. Indication as to whether public comment must be written;
3. The date by which comments must be submitted and the person to which comments must be submitted; and
4. When public proceedings are to be held, including information regarding how persons can participate in the proceeding, and information regarding the deadline for submitting written comments before the proceedings.

F. Upon expiration of the public comment period, the remaining steps in the adoption process shall be carried out in accordance with provisions of the Administrative Process Act.

G. Upon issuing an order adopting a regulation, the department shall summarize its response to comments made by interested parties during the public comment period.

H. When any regulation is published, the department shall print and distribute it.

I. The failure of any person to receive notice or copies of documents shall not affect the validity of any regulation otherwise properly adopted under the provisions of the Administrative Process Act.

VA.R. Doc. No. R94-54; Filed September 28, 1993, 3:09 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-08-01. Virginia Energy Assistance Program.

The State Board of Social Services is withdrawing the proposed regulation entitled "VR 615-08-01. Virginia Energy Assistance Program," published in 9:20 VA.R. 3554-3556 June 28, 1993.

VA.R. Doc. No. R94-60; Filed September 28, 1993, 3:58 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

Title of Regulation: VR 627-01-1. Public Participation Guidelines (REPEALING).

Title of Regulation: VR 627-01-1:1. Public Participation

Proposed Regulations

Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until December 20, 1993.

(See Calendar of Events section for additional information)

Basis: The statutory authority for the board to promulgate the Board for Professional Soil Scientists Public Participation Guidelines is found in § 54.1-201 of the Code of Virginia. The board is empowered to promulgate regulations setting standards for initial licensure, continuing licensure and conduct standards for soil scientists who voluntarily decide to obtain state certification.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process Act (APA) and the revisions to the APA made by the 1993 Virginia General Assembly by establishing procedures to be followed by the board in soliciting, receiving and considering public comment.

Substance: The proposed Board for Professional Soil Scientists Public Participation Guidelines contain the same language as the emergency public participation guidelines, which are currently in effect. Therefore, there is no change from the current status of the law.

Issues: The issues of the proposed PPG's are such that the public has the advantage of participating in the development of the licensing soil scientists regulations. With the participation of the public, they will become more familiar with the contents and expectations of the licensing regulations. The advantage to the agency is such that with public knowledge of the regulations, the agency should save considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed Board for Professional Soil Scientists Public Participation Guidelines affect approximately 74 individuals certified as soil scientists.

Since the proposed public participation guidelines are identical to the current emergency public participation guidelines, there will be no additional cost to the agency in the implementation and compliance of this regulation.

Summary:

The Board for Professional Soil Scientists Public Participation Guidelines (PPG's) mandate public participation in the promulgation process of soil scientists certification regulations. The Board for Professional Soil Scientists will maintain a mailing list to notify persons and organizations of intended regulatory action. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period" and a notice that final

regulations have been adopted. The PPG's will outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days and will state whether or not a public hearing will be held. The PPG's give specific instances on when the agency must hold a comment period and when the agency must reevaluate the regulations. The PPG's establish the procedures for formulation and adoption of regulations and the procedures to be taken when substantial changes have been made prior to final adoption of the regulations. The use of and input from advisory committees to formulate regulations are established in the PPG's. The PPG's specify what meetings and notices will be published in The Virginia Register.

VR 627-01-1:1. Public Participation Guidelines.

§ 1. Mailing list.

The Board for Professional Soil Scientists (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

- 1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.*
- 2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.*
- 3. Notice that the final regulations have been adopted.*

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and

Proposed Regulations

respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on the existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of the proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession;
2. Industry, professional and trade associations' mailing lists; and
3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1, 2, 3, 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

V.A.R. Doc. Nos. R94-56 and R94-57; Filed September 29, 1993, 11:54 a.m.

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

REGISTRAR'S NOTICE: The following proposed regulations filed by Virginia Polytechnic Institute and State University are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: VR 660-01-01. Traffic and Parking Regulations.

Statutory Authority: § 23-9.2:3 3 of the Code of Virginia.

Summary:

These regulations are established to promote safety and control student, employee and visitor vehicle registration, parking and operation on the campus of Virginia Polytechnic Institute and State University.

VR 660-01-01. Traffic and Parking Regulations.

PART I.

Proposed Regulations

GENERAL PROVISIONS.

§ 1.1. Mission.

A. The mission of the Parking Services Office is to work toward providing safe, convenient, and secure parking areas and to facilitate travel to, from, and within the campus for members of the university community and guests.

B. The university president has appointed an advisory committee so that individuals in the university community can comment on parking and transportation problems and make suggestions as to their solution. The Parking and Transportation Advisory Board makes recommendations on general policies relating to traffic and parking matters on campus. Students, faculty members, and staff members are represented on this committee.

§ 1.2. General information.

A. Traffic and parking regulations, as published by the university, will be administered by the Parking Services Office and the University Police Department. These regulations, pursuant to authority granted by Virginia state statute to the board of visitors, are enforceable as laws of the Commonwealth. Regulations are needed to aid in safety and orderly conduct of university business, as well as to provide parking facilities within the limits of available space. Students are to obey these regulations as a condition of attendance and faculty and staff members are to obey them as a condition of employment.

B. Changes in these regulations and notices about parking regulations for special events are official when published in the Spectrum and Collegiate Times and when listed on the university's administrative display system on the mainframe computer (PROFS or CMS information screens).

C. If you have any questions, comments, or suggestions, please call the Parking Services Office at 231-3200 or visit the Visitor Information Center on Southgate Drive.

D. The university shall have no responsibility for loss or damage to any vehicle, or its contents, operated or parked on the Virginia Tech campus.

PART II. MOTOR VEHICLE REGISTRATION.

§ 2.1. Permit parking.

A. The purchase of a permit does not guarantee a parking place, but merely allows for legal parking in an appropriate area.

B. Permits allowing parking in specific areas of the campus. Permits are required from 7 a.m. to 5 p.m., Monday through Friday, whenever the university is open for business, whether classes are in session or not. This

includes semester breaks.

§ 2.2. Who must register.

A. All motor vehicles, motorcycles, and motor scooters on campus requiring state license plates are required to be registered with the Parking Services Office. Vehicles operated by the faculty, staff, and students in connection with their employment or attendance at Virginia Tech are required to display a parking permit before parking on campus or on university-leased property.

B. Visitors, vendors, contractors, and university employees who are employed at university remote sites and visiting the university on a short-term basis (30-day maximum) should register for a complimentary visitor permit.

C. Vehicle registration is valid until the registrant is no longer affiliated with the university as a student, faculty, or staff member, or until the permit expires. Faculty and staff permits are to be returned to Parking Services when an employee leaves the university.

§ 2.3. How to register.

A. Bring your vehicle information and Virginia Tech ID to the Visitor Information Center on Southgate Drive to purchase a parking permit.

B. Students are required to show their vehicle registration. The vehicle must be owned by the student or an immediate family member.

C. An individual may register more than one vehicle since the hangtag style permit can be moved from one vehicle to another. Individuals having two vehicles parked on campus at the same time must have each vehicle registered and displaying a permit.

D. Only one permit type per vehicle is allowed. Sharing of permits and other unauthorized use may result in a \$100 fine. If a vehicle is shared by two persons needing different permit types, the Parking Services Office needs to be notified before the vehicle can be registered.

E. Vehicles are to be registered no later than the end of the first week of the semester. Student vehicles must be parked in designated student areas at all times, including the first week of classes and semester breaks.

§ 2.4. How to display.

A. The registration procedure is not complete until the permit is properly displayed on the vehicle; permits must be displayed in the proper location and so that the maroon side can be seen through the windshield by enforcement officers.

B. The permit is to be displayed on the rearview mirror, facing the windshield. Motorcycle permits are to

Proposed Regulations

be displayed on the front fork. Bumper stickers are available for vehicles that cannot be locked (e.g., Jeep CJ, Suzuki Samuri, etc.) and are to be affixed to the driver's side rear bumper.

C. A vehicle displaying two different types of permits (e.g., displaying a faculty/staff permit and a commuter student permit at the same time) may be ticketed.

§ 2.5. New vehicles.

Original permits (if hangtag style) can be transferred to a new vehicle if Parking Services is notified of the new vehicle information. If the permit is other than a hangtag style, the original permit must be returned to the Parking Services Office to receive a free replacement permit for the new vehicle.

§ 2.6. Lost or stolen permits.

A. There will be no refund or free replacement for lost or stolen decals or hangtags. Replacement permits may be purchased for \$5 after filing a lost/stolen permit report at the Parking Services Office. Purchasers are encouraged to lock their vehicles and safeguard their permits.

B. If the original permit is found, the replacement permit must be returned to the Parking Services Office. Failure to do so could result in a \$100 unauthorized-use fine.

§ 2.7. Refunds.

As a general rule, refunds for parking permits and tickets are not granted. Under special circumstances however, Parking Services may use its discretion in granting certain refunds.

PART III. PERMIT TYPES.

§ 3.1. Issuance of permits.

All parking permits for the categories listed in this part are issued by the Parking Services Office on Southgate Drive.

§ 3.2. Resident (on campus) permit.

This permit allows parking only on the right side of the Resident Lot (fenced lot at west end of Washington Street), the west end of Lot D (Stadium Lot, between Lane Stadium and Southgate Drive), and the overflow lot beyond the golf course. Parking is not permitted in Lot D (Stadium Lot) from 11 p.m. the night before any home football game until the game has ended.

§ 3.3. Commuter (off campus) permit.

A. This permit allows parking in the Commuter Lot (between Perry Street and Prices Fork Road); the left side

of the Resident Lot (nearest the Vet-Med School on Duck Pond Drive at Washington Street); the commuter section of the Wallace Hall Lot; and the overflow lot beyond the golf course at the end of the Duck Pond. Commuter permit holders may also park in designated portions of the Coliseum Parking Lot and along Stadium Road (in marked parking spaces), except at specific times as noted in the Football and Basketball Parking Restrictions sections of these regulations.

B. Parking in commuter lots is prohibited from 2 a.m. to 6 a.m. unless prior arrangements have been made with the Parking Services Office (7:30 a.m. - 5:00 p.m., Monday through Friday) or the University Police Department all other times.

C. Students please note: if student status changes to faculty/staff status before the expiration date on the permit, the student permit must be exchanged for a faculty/staff permit within five working days.

§ 3.4. Faculty/staff permit.

A. This permit allows parking in any legal parking area on campus. New employees, see the New Employee (Temporary) Parking Permits section (§ 3.6).

B. Faculty/staff permits are issued to salaried (full or part-time) and wage employees of the university. Graduate teaching assistants, graduate research assistants, and part-time salaried or wage employees who are students (taking more than six hours during fall or spring semesters; one or more hours during the summer semester) are not authorized to purchase a faculty/staff permit.

C. If faculty/staff status changes to student status before the expiration date on the permit, the faculty/staff permit must be exchanged for a student permit within five working days.

§ 3.5. Daily permits.

A. These permits are available for \$1 per day for those who drive only occasionally or who bring a second vehicle. Daily permits may be purchased in advance and validated on the date of use.

B. A daily permit allows parking in the area indicated on the permit for any one day selected by the purchaser. The date of use will be blackened in with a pen or marker; pencil markings are not acceptable to validate the permit. The misuse, resale, fabrication, alteration, or unauthorized transfer of daily permits will result in a \$100 fine.

§ 3.6. New employee (temporary) parking permits.

A. All first-time new employees of the university can receive a temporary parking permit. The new employee temporary permit will be valid for not more than 30

Proposed Regulations

calendar days, beginning with the first day of paid employment.

B. The new employee must bring an employment validation form from the hiring department to the Parking Services Office.

C. It is recommended that this process be completed the first day of employment. Unauthorized use of these permits carries a \$100 fine to the person displaying such a permit.

D. Full-time Virginia Tech students (taking more than six hours during fall or spring semesters; one or more hours during the summer semesters) who are employed by the university are not eligible for temporary employment permits.

§ 3.7. Visitor permits.

A. Visitors may park in any faculty, staff, visitor, or student parking space if they have a valid visitor parking permit. Visitor parking permits are available through the Visitor Information Center on Southgate Drive (7:30 a.m. - 5 p.m., Monday through Friday) or at the University Police Department in the Maintenance Complex on Southgate Drive all other times. Visitor permits must be signed and dated by an authorized parking services or police official and displayed 7 a.m. to 5 p.m., Monday through Friday.

B. University employees who are employed at university remote sites and are visiting the university on a short-term basis (30-day maximum) may register for a visitor permit.

C. Metered parking spaces are also available for short-term visitors on campus. Visitors with parking permits may not park free at parking meters. Visitors may park in the CEC Parking Lot at the corner of College Avenue and Otey Street across from the Continuing Education Center with a valid visitor permit.

§ 3.8. Vendors and contractors.

These and other who visit the campus frequently can apply for a long-term visitors pass if they present a letter from their company or supervisor. These letters should include the name, social security number, and license plate number of each person who needs a pass, as well as a contact person and contact phone number.

§ 3.9. Turf permits.

These permits are available for individuals needing to park on the grass. This permit does not allow parking on sidewalks. These permits are issued by the Parking Services Office.

DISABILITY PARKING.

§ 4.1. Special assistance.

If an individual requires special assistance, the parking manager should be notified at 231-3200 for special arrangements.

§ 4.2. Handicap parking.

A. These spaces on campus are exclusively for those persons displaying state-authorized DMV handicap license plates or permits. These permits are available to any individual who has a disability of six weeks or longer duration. The Virginia Department of Motor Vehicles office nearest Virginia Tech is located at Route 114 (Peppers Ferry Road) and Walters Drive in Christiansburg (telephone 382-5000). Only state DMV handicap permits allow parking in handicap spaces. State DMV handicap permits also allow free parking at metered spaces.

B. Faculty members, staff members, and students with handicap passes or plates are required to obtain a Virginia Tech parking permit to park on campus.

C. Unauthorized vehicles parked in handicap spaces will be ticketed and towed at the owner's expense. See Part X on towing for details on recovering a car.

D. Handicapped individuals may also use the Blacksburg Transit Para-Transit system, which has lift-equipped vehicles for on- and off-campus transportation needs. Call 961-1803 for more information.

§ 4.3. Temporary medical disability permits (TMD).

A. A Virginia Tech temporary medical disability permit (TMD) is available for students having mobility impairments lasting six weeks or less. If the disability qualifies for a handicap permit, it should be obtained from the Virginia Department of Motor Vehicles. Because of Virginia state laws, TMD permits are not valid at handicap spaces at any time.

B. TMD permits allow students to park in faculty/staff area, and are valid only with a Virginia Tech commuter or resident parking permit. Persons with TMD passes may park in metered spaces as long as the meter is kept current with the proper amount of coins.

C. A temporary medical disability permit can be obtained at the office of Parking Services by presenting a request slip from the Student Health Services or a doctor's statement. This documentation must include how long the disability requires special parking.

D. Unauthorized use of a TMD permit carries a \$100 fine to the person displaying such a permit.

PART IV. HANDICAP AND TEMPORARY MEDICAL

PART V. SPECIAL-NEEDS PARKING.

§ 5.1. Temporary or short-term parking.

Permission may be obtained from the Parking Services Office (7:30 a.m. - 5 p.m., Monday through Friday) or the University Police Department all other times for temporary or short-term parking for emergencies and for loading and unloading only. Permission must be obtained before parking, and only the Parking Services Office and the University Police Department are authorized to grant such permission. Anyone with a parking problem should contact the Parking Services Office to seek a possible solution before parking illegally. Emergency flashers or signs on a windshield indicating the vehicle is disabled or loading/unloading are not acceptable notification.

§ 5.2. Loading/unloading.

A. Thirty minutes is the maximum time allowed for loading and unloading. A current Virginia Tech parking permit and prior authorization are required from 7 a.m. to 5 p.m. weekdays to use this service. Authorization can be obtained by calling Parking Services 7:30 a.m. to 5 p.m. Monday through Friday, or the University Police Department all other times. Please have available your license plate number and permit number.

B. To load vehicles for the weekend, only resident permit holders may park in most faculty/staff areas near residence halls after 2:30 p.m. on Fridays. You are allowed a maximum of 30 minutes and a call to the Parking Services Office is not necessary. However, Owens and Dietrick Dining Hall lots are reserved exclusively for faculty and staff parking 24 hours a day, seven days a week.

§ 5.3. Disabled vehicles.

A. The Parking Services Office and the University Police Department should be notified immediately if an automobile is disabled. Emergency flashers or signs on the windshield indicating the vehicle is disabled are not sufficient. Any disabled vehicle in a roadway, blocking traffic, creating a hazard, or illegally parked in a handicap space will be towed immediately at the owner's expense. If in a legal parking space, a disabled vehicle is to be removed within 24 hours.

B. The parking lots are not designed or intended for automobile repairs. If repairs become necessary, permission must be secured from the Parking Services Office or the University Police Department. Permission will be granted only for minor repairs and never for more than 24 hours.

§ 5.4. Special-event/special group parking.

Contact the Parking Services Office at least two weeks prior to the event for special parking arrangements.

§ 5.5. Residence hall move-in/move out.

Special parking arrangements are in effect for these periods. Call the Parking Services Office for more information.

PART VI. ENFORCEMENT.

§ 6.1. Enforcement authority.

A. Only designated Parking Services and University Police Department employees shall have the authority to enforce the parking rules and regulations herein established.

B. The university reserves the right to prohibit or restrict parking on university-owned or university-leased property for special circumstances. Any individual who accumulates 10 or more unpaid tickets in an academic year is considered to be abusing parking privileges and may lose parking privileges on campus for the remainder for that period. Parking Services reserves the right to confiscate the parking permit attached to such a vehicle, and there will be no refund to the owner of that permit. In addition, the vehicle may be towed from campus at the owner's expense.

§ 6.2. Expired meter.

A. Virginia Tech has parking meters available to meet short-term parking needs of visitors, faculty, staff, and students. Most meters take nickles, dimes, and quarters. The 10 meters nearest the War Memorial Gym are reserved for faculty, staff and visitors only. Parking permits (including visitor permits) never allow parking at meters without paying the meter. State DMV handicap permits do allow free parking at meters.

B. Any parking meter covered with a green cover indicates "general parking," a yellow cover indicates "no parking," and a red cover indicates "faculty/staff parking only." A parking space that has a post with no meter head may be used by anyone authorized to park in that area.

C. Meters are enforced from 7 a.m. to 5 p.m., Monday through Friday. Meters in the Bookstore lot are enforced from 7 a.m. to 7 p.m., seven days a week.

D. Please notify the Parking Services Office before moving a vehicle from a defective meter so that the meter may be checked immediately.

§ 6.3. Parking in an unauthorized area.

A. Resident and commuter student permit parking is prohibited on campus streets and in faculty/staff parking areas (except where signs designate otherwise) from 7 a.m. to 5 p.m., Monday through Friday. Parking at other times may also be prohibited as announced and/or posted in all parking areas. Overnight (2 a.m. - 6 a.m.) commuter student parking on campus is prohibited unless prior

Proposed Regulations

arrangements have been made with Parking Services (7:30 a.m. - 5 p.m., Monday through Friday) or the University Police Department all other times.

B. To load vehicles for the weekend, only resident permit holders may park in most faculty/staff areas near residence halls after 2:30 p.m. on Fridays for a maximum of 30 minutes. However Owens and Dietrick Dining Hall lots are reserved exclusively for faculty and staff parking 24 hours a day, seven days a week. All dining hall loading dock areas are posted as "No Parking" or "Service Vehicle Parking Only" at all times.

C. The parking lot across from the Donaldson Brown Continuing Education Center (CEC) and in front of Squires is reserved for faculty and staff parking 24 hours a day, seven days a week. Visitors and CEC guests may also park in this parking lot.

D. Persons receiving an "Unauthorized Area" ticket but whose vehicle is registered with the Parking Services Office and parked in an authorized area may request that their ticket be voided. This request is only valid if filled out within 10 calendar days of ticket issuance and upon presentation of the permit. This request may be made a maximum of three times within an academic year. Forms are available at the Parking Services Office for these requests and are necessary to comply with audit procedures.

E. If you forget your hangtag on any given day, stop by the Parking Services Office to verify your registration and obtain a temporary one-day permit before parking on campus. There is no charge for this permit.

F. Vehicles not registered with Parking Services prior to parking on campus will receive an "Unauthorized Area" ticket.

§ 6.4. Parking on a yellow curb.

Yellow painted curbs, poles, and lines including those inside the parking lots and at loading docks, indicate no parking. Yellow curbs designate safety zones established by traffic engineers to facilitate free and safe movement of emergency vehicles and other traffic moving into and out of the area.

§ 6.5. Parking in a no parking zone.

A. Parking is permitted in authorized, clearly identified parking spaces only. Parking is not allowed in or on lawns, grass, loading zones, bus stops, pedestrian crosswalks, handicap spaces, handicap access ramps, yellow lines or curbs, service drives, service vehicle spaces, unmarked areas, and fire lanes without specific authorization. Parking on any sidewalk is prohibited at all times. Bagged or covered signs indicate special purpose or no parking.

B. A general rule to follow is that parking is permitted

only between white-painted control lines; if no control lines exist, do not park there.

§ 6.6. Other no parking situations.

Parking is not permitted in roadways, occupying multiple spaces (double parking), facing in wrong direction, etc. This violation may also include any of the no parking zones mentioned in § 6.5.

§ 6.7. Overtime parking (parking in timed areas).

Timed parking areas (e.g., in front of Burruss, in Shultz lot, at the Duck Pond, etc.) are strictly enforced to provide limited, short-term parking for the purposes of brief business in certain areas by faculty, staff and students.

§ 6.8. Parking in a handicap zone.

Handicap parking spaces on campus are exclusively for those persons displaying state-authorized DMV handicap license plates or permits. Unauthorized vehicles parked in a handicap space will be ticketed and towed at the owner's expense.

§ 6.9. Unauthorized use of permit.

A. The misuse, resale, fabrication, alteration, or unauthorized transfer of a Virginia Tech parking permit is illegal. Permits are to be used only by the original purchaser, and are required to be purchased from the Parking Services Office. Vehicles displaying lost, stolen, or fraudulent Virginia Tech parking permits will be immobilized or towed immediately and the campus police notified.

B. "Unauthorized Use of Permit" violations will be assessed against the person who purchased the permit or the person to whom the vehicle is registered with the DMV. An "Unauthorized Use of Permit" ticket carries a \$100 fine and may carry a judicial referral and/or criminal charge. Vehicles may also be towed or immobilized.

§ 6.10. Motorcycles.

Motorcycles need to be parked in designated motorcycle areas within the parking lots or in a regular space designated by white-painted control lines. The areas set aside for motorcycles correspond to the permit type required in that lot (e.g., a faculty/staff permit is necessary in a motorcycle area within a faculty/staff parking lot). Vehicles are not to be parked in areas designated for motorcycles.

§ 6.11. Bicycles.

See Part XIII.

§ 6.12. Responsibility.

All parking violations are the responsibility of the person who purchased the permit or the person to whom a vehicle is registered with the DMV. Violations that are issued to a member of the immediate family of a faculty/staff member or student are assumed to have been committed by the faculty/staff member or student.

PART VII. PARKING RESTRICTIONS.

§ 7.1. Football and basketball parking restrictions.

Parking in the Coliseum Lot and along Spring and Stadium Roads is strictly forbidden at the following times:

1. After 5:15 p.m. on the day before a home varsity football game or weekend home varsity basketball game until the game has started.
2. After 5:15 p.m. on the day of a weekday home varsity men's basketball game until the game has started.
3. The Lane Stadium lot is also restricted from parking after 11 p.m. the night before all home football games until the game has started.
4. During any other special event when prior notice is given by the posting of signs the morning of the event. Failure to comply with these restrictions will result in the vehicle being ticketed and/or towed at the owner's expense.

§ 7.2. Special Purpose and Graduate Housing parking.

A. Parking at the Special Purpose Housing complex is limited and only available to residents with special permits. Residents of the Special Purpose Housing complex are required to register their vehicles with the Parking Services Office as well. Visitors who wish to park in these areas should:

1. Park in the gravel parking lot adjacent to the Duck Pond on Oak Lane.
2. Ride the "Heathwood" BT bus from campus and get off at the Special Purpose Housing stop at the Anaerobe Lab on Prices Fork Road. Parking is available in the Commuter "B" lot adjacent to the bus stop on West Campus Drive.
3. Park in I Lot and ride the BT shuttle bus provided. Contact the Office of Residential and Dining Programs or the Blacksburg Transit Office for a schedule.

B. Special Purpose Housing parking is not permitted at the Anaerobe Lab on Prices Fork Road at any time. Unauthorized vehicles in the lab parking lot may be towed at owner's expense.

C. All residents of Special Purpose Housing, Hillcrest

Graduate Housing, and Main Campbell Graduate Housing qualify for commuter parking permits. Special passes to be used with their Virginia Tech commuter parking permits will be issued by area coordinators to designate these residents.

§ 7.3. Golf Course, Duck Pond, Tennis, and Rec Field Parking.

Individuals may park in the specially designated parking areas at the Golf Course and Tennis Pavilion only while registered to engage in either activity, and at the Duck Pond only while present there. In addition to the above restriction, a Virginia Tech parking permit is required to park in these areas. Duck Pond parking is limited to two hours. Parking for participants at the Tennis Pavilion and Rec Field is available in the General (Resident) Parking Lot below Lane Stadium.

PART VIII. ESCORT SERVICE.

§ 8.1. Escort Service.

The University Police Department provides a dusk-to-dawn service for individuals who need to walk at night from their dorm or office to their vehicle. Please call 231-SAFE (231-7233) for details.

PART IX. PARKING VIOLATIONS.

§ 9.1. Fines and violations.

A. Fines for parking violations are as follows:

1. Most parking and bicycle violations are \$10 each.
2. Unauthorized parking in a designated handicap space is a \$50 violation.
3. Unauthorized or fraudulent use of a Virginia Tech parking permit is a \$100 violation.

B. Parking fines not received at the Office of the University Bursar within 10 days from the date of ticket issuance, or postmarked within seven days of issuance shall result in an additional \$10 late fee unless the ticket is under appeal. Payments sent through campus mail must be received by the 10th day of ticket issuance. Lost, stolen, or misplaced tickets do not excuse the late fee.

C. Fines may be handled as a payroll deduction or Commonwealth of Virginia tax offset, or applied against other existing accounts with the university. Nonpayment of fines may result in blocked class registration and/or withheld grade transcripts. Outstanding fines may also be given to a collection agency. Accounts sent to collections will be assessed an additional collection cost.

D. All parking fines will be assessed against either the

Proposed Regulations

person who purchased the parking permit or the registered DMV owner of the vehicle.

§ 9.2. Payment of parking fines.

A. Parking fines may be paid by:

1. Paying in person at Burruss Hall:

a. If the ticket is less than 10 days old, pay at Burruss Hall, second floor, window 8.

b. If the ticket is over 10 days old, go to 227 Burruss, pick up a remittance form, and pay at window 6 or 7. If you already have a remittance form, you can go directly to window 6 or 7.

2. Mailing ticket and payment through U.S. mail. Payment envelope must be postmarked no later than seven days from the date of ticket issuance to avoid a late fee. Mail to:

Office of the University Bursar
233 Burruss Hall
Virginia Tech
Blacksburg, VA 24061-0143

3. Mailing ticket and payment through campus mail to the Office of the University Bursar, campus mail code 0143. Payment must be received by the 10th day of ticket issuance to avoid a late fee.

4. Depositing the ticket and payment in the lock box outside the Visitor Information Center on Southgate Drive. Payment must be received by the 10th day of ticket issuance to avoid a late fee.

B. Checks should be made payable to: Treasurer, Virginia Tech.

C. Do not send cash through the mail or deposit cash in lock box.

PART X. IMMOBILIZATION POLICY (TOWING).

§ 10.1. Vehicle towing.

A. Vehicles may be immobilized and/or towed at the owner's expense under the following circumstances:

1. For vehicles displaying lost, stolen, or fraudulent Virginia Tech parking permits, the campus police will be notified and the vehicle immobilized or towed. The vehicle will also be ticketed for unauthorized use of permit.

2. When a vehicle is illegally parked in a handicap zone or fire lane (such towing is required by state law).

3. When a vehicle is illegally parked, restricting traffic, or creating a traffic hazard.

4. When three or more unpaid tickets have accumulated.

5. When vehicles are parked on designated snow routes. Most streets and roads on campus are considered snow routes.

6. When vehicles are parked in violation of football and basketball game restrictions.

7. If notified by the Parking Services Office or the University Police Department to move a vehicle, and the owner or user does not accomplish this move within the specified time.

B. If the tow truck is called and the vehicle owner arrives on the scene to move the vehicle, the tow order may be cancelled.

C. If the tow truck is already en route, the person responsible for the vehicle may still be required to pay towing costs before being permitted to move the vehicle. A ticket for illegal parking will also be issued.

D. The Parking Services Office and University Police Department are not responsible for damage resulting from towing or immobilization of vehicles.

§ 10.2. Vehicle recovery.

If a vehicle is towed, the owner or person responsible must report to the University Police Department to arrange to recover the vehicle. Any fines and towing costs must be paid before the towing company will release the car.

§ 10.3. Abandoned vehicles.

Abandoned cars will be disposed of in accordance with Virginia state law. Any vehicle that does not have current license plates will be presumed to be abandoned.

PART XI. MOVING VIOLATIONS.

§ 11.1. Moving violations.

A. The University Police Department is charged with the enforcement of all state laws, including the Motor Vehicle Code of Virginia. Traffic citations for moving violations are referred to local courts. Campus speed limits are radar enforced.

B. The speed limit on campus is 25 MPH unless otherwise posted.

C. The speed limit around the Drillfield is 15 MPH.

D. Every person shall obey the instructions of any traffic control device, sign, or notice, unless otherwise directed by a traffic control officer.

E. All university police officers have the authority to enforce the laws of the Commonwealth and the university pertaining to the operation of motor vehicles on campus property.

PART XII. APPEALS.

§ 12.1. Appealing a violation.

A. The appeals hearing officer for the university will review all written appeals involving nonmoving traffic violations. Traffic citations for moving violations are issued by the University Police Department on campus and referred to the local courts for a decision.

B. Tickets received for parking on a yellow line or curb, handicap zone, or metered space will not be viewed favorably in the appeals process except in genuine emergency situations as determined by the appeals hearing officer.

C. If a person wishes to appeal a parking or bicycle ticket, the procedure below should be followed:

1. All appeals must be filed within 10 calendar days of issuance of the ticket. All rights to appeal a ticket are waived after this 10-day period.

2. The appeal must be written on an official appeals form available in the Parking Services Office. This is necessary to ensure the Parking Services Office has all the necessary information to process the appeal and satisfy audit procedures.

3. Please make sure the address and phone numbers you list are complete, accurate, and legible. The Parking Services Office cannot be responsible if you fail to receive your appeal notice under these circumstances. Remember to notify the Parking Services Office of any address changes.

4. The issue on appeal is whether or not the cited rule was violated. It is no defense to "not mean" to violate a rule, to "see others" violate it, to "not realize" it was violated, or to have "violated it in the past without penalty."

5. All appeals should be finalized by the last day of classes.

6. The decision of the appeals hearing officer is final.

PART XIII. BICYCLE INFORMATION (REGISTRATION AND PARKING).

§ 13.1. General.

All designated employees of the Parking Services Office and the University Police Department have the authority to enforce these rules and regulations.

§ 13.2. Registration.

All bicycles and mopeds are to be registered with the Parking Services Office prior to parking on campus. Registration for bicycles and mopeds is provided as a courtesy at no charge. However, the user of a non-registered bicycle on campus will be subject to a \$10 fine and impoundment or immobilization of the bicycle or moped. Impounded or immobilized bicycles may be retrieved after the owner presents proof of ownership to the Parking Services Office.

§ 13.3. Parking enforcement.

A. Bicycles may be parked only at bicycle racks, except when permission has been granted to keep a bicycle inside a campus building. (Housing must approve keeping a bike in a dormitory room. A department head must grant permission to keep a bike in a faculty office.)

B. Mopeds may be parked only at bicycle parking racks.

C. No person is allowed to park a bicycle or moped as follows:

1. On a sidewalk, at a tree or post, on a lawn, next to a building, in a roadway, at a utility pole, light post, banister, parking meter, or other available structure. Always use a bicycle rack.

2. So that it blocks or obstructs any entrance, exit, ramp or breezeway.

3. In any campus building (except as permitted in dormitory rooms and faculty offices).

4. In a parking area designated for motor vehicles.

5. In other than an upright position.

D. Bicycles or mopeds found parked and/or locked in areas other than those allowed may be impounded or immobilized by the Parking Services Office or the University Police Department. The person responsible for the bike will receive a bicycle parking ticket.

E. Motorcycles may not be parked in bicycle racks. Students' motorcycles are to be parked in designated student motorcycle areas.

§ 13.4. Operation enforcement.

A. Bicycles are useful means of transportation when used properly. By taking a few precautions, bicycling can be a safe, enjoyable and theft-free experience.

Proposed Regulations

B. Every person operating a bicycle on university property is to comply with all traffic control devices, applicable Virginia state statutes regarding bicycle operation, and these regulations.

C. Persons riding bicycles on campus are to practice courteous, defensive riding. They will consider pedestrians and conditions that require traveling at safe speeds. At all times, they are to be in proper control over their bicycles.

D. Remember the following:

- 1. Persons may not operate a bicycle on any campus sidewalk, lawn, or designated pedestrian plaza, such as the Library Plaza, Cowgill Plaza, etc.*
- 2. It is illegal to ride in the wrong direction on a one-way street or against the regular flow of vehicular traffic, including the Drillfield.*
- 3. Persons operating a bicycle will yield to pedestrians in situations of conflicting bicycle/pedestrian traffic.*
- 4. Ride single file, with traffic, and to the right of the roadway.*
- 5. Use bike paths when available.*
- 6. Use proper turn signals.*
- 7. Keep bicycle in proper mechanical condition.*
- 8. Watch for people exiting parked vehicles.*
- 9. Watch for the unexpected from motorists. (The number-one statement of vehicle operators involved in accidents with cyclists is, "I didn't see him!")*
- 10. Virginia law requires a rear reflector and a headlight when riding at night.*
- 11. In crosswalks, always walk; you are considered a pedestrian.*
- 12. If involved in an accident, report it to the University Police Department immediately.*

E. Moving violations will result in a traffic citation being issued by the University Police Department. Repeated violations may result in suspension or revocation of bicycle operation privileges on campus.

§ 13.5. Theft prevention.

Bicycles are an easy target for theft. Some helpful hints are as follows:

- 1. Use bike racks, and secure bikes with bar-type locks.*
- 2. Secure frame and front wheel.*

3. Chain fences and chain-type locks can be quickly and easily cut.

4. Check bicycle frequently so it doesn't appear abandoned.

5. Park in high visibility areas.

6. Personalize your bicycle to make it easy to recognize.

7. Engrave your bike in several locations.

8. Register your bicycle. If it is stolen and then located, you can be easily found and ownership readily determined.

9. Write down the make, model, and serial number of your equipment. Keep this information in a safe place with the receipt of purchase.

10. Have your bicycle insured.

If your bicycle is stolen on campus, report the theft to the University Police Department.

§ 13.6. Abandoned bicycles.

Bicycles left on the university grounds more than five days following graduation will be considered abandoned. These bikes will be impounded and disposed of in accordance with university policy regarding such property.

PART XIV.

AVOIDING PARKING TICKETS AND TOWING CHARGES.

§ 14.1. How to avoid parking tickets and towing charges.

A. Properly display a Virginia Tech parking permit.

B. Park in a clearly identified parking space appropriate for your permit.

C. Do not loan your permit to others. Shared permits may result in a \$100 "Unauthorized Use of Permit" ticket assessed against the permit owner.

D. Have visiting family and friends obtain a visitor parking permit before parking on campus.

E. Observe special parking restrictions such as:

1. Parking lots at the Owens Dining Hall, Dietrick Dining Hall and the Donaldson Brown Continuing Education Center (CEC) are restricted to faculty and staff parking only, 24 hours a day, seven days a week.

2. All dining hall loading docks prohibit parking at all times.

3. *Parking is prohibited in the Coliseum Lot and along Stadium and Spring Roads after 5:15 p.m. on the day before a home varsity football game or weekend home varsity basketball game, or after 5:15 p.m. on the day of a weekday home varsity men's basketball game until the game has started.*

4. *Parking is prohibited in the parking lot below Lane Stadium from 11 p.m. the night before any home football games until the game has started.*

5. *Other special restrictions, as posted.*

§ 14.2. *Avoiding late fees.*

Avoid a \$10 late fee per ticket by making sure payment is made to the Office of the University Bursar in Burruss Hall within 10 calendar days of ticket issuance; if payment is mailed, the payment envelope must be postmarked within seven days of ticket issuance. Payments sent through campus mail must be received by the 10th day of ticket issuance. Do not send cash through the mail or deposit cash in the payment box at the Visitor Information Center. Checks should be made payable to Treasurer, Virginia Tech.

VA.R. Doc. No. R94-40; Filed September 24, 1993, 12:42 p.m.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

Effective Date: November 17, 1993.

Summary:

This regulation adopts the option set forth in the Administration for Children and Families (ACF) Action Transmittal 91-33 dated December 12, 1991, issued by the Department of Health and Human Services (HHS), which allows all states when making a determination of the specified relative under Section 402 of the Social Security Act, to recognize a specified relative to be any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child. The federal action transmittal interprets the federal regulation, 45 CFR 233.90 (c) (1) (v) (A) (1), to recognize a specified relative to be any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child as determined by the civil law method of computing degree of kinship. Until these federal regulations are revised and issued, this regulation will remain an option to states.

REGISTRAR'S NOTICE: The repeal of the following regulations by the Department for Rights of Virginian's with Disabilities is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The department will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 602-01-1. Public Participation Guidelines (REPEALED).

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Statutory Authority: § 51.5-40 of the Code of Virginia.

Agency Contact: Copies of the regulation may be obtained from Peggy Friedenberg, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820. There may be a charge for copies.

Effective Date: November 17, 1993.

Summary:

This regulation is being repealed in order to comply with a change in § 51.5-40 of the Code of Virginia.

VA.R. Doc. No. R94-19; Filed September 22, 1993, 2:11 p.m.

* * * * *

Title of Regulation: VR 602-01-2. Nondiscrimination Under State Grants and Programs (REPEALED).

VR 615-01-43. Aid to Families with Dependent Children (AFDC) Program - Fifth Degree Specified Relative.

Statutory Authority: § 51.5-40 of the Code of Virginia.

Effective Date: November 17, 1993.

Summary:

This regulation is being repealed in order to comply with a change in § 51.5-40 of the Code of Virginia.

VA.R. Doc. No. R94-20; Filed September 22, 1993, 2:11 p.m.

PART I. DEFINITIONS.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise:

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-01-43. Aid to Families with Dependent Children (AFDC) Program—Fifth Degree Specified Relative.

"Aid to Dependent Children (AFDC) Program" means the program administered by the Virginia Department of Social Services through which a relative can receive monthly cash assistance for the support of his eligible children.

Statutory Authority: §§ 63.1-25 and 63.1-110 of the Code of Virginia.

"Specified relative" means the degree of relationship

which must exist between a caretaker and a dependent child in order for the caretaker relative to qualify for assistance under this program.

**PART II.
FIFTH DEGREE RELATIVE OF SPECIFIED
DEGREE.**

§ 2.1. Specified relatives.

The relative with whom the child is living, who is designated as the caretaker, must be one of the following:

1. A blood relative. Mother; father, including the father who is not married to the child's mother when evidence of paternity exists as described in Section 201.4 of the Virginia Department of Social Services Aid to Families with Dependent Children Manual; brother; sister; uncle; nephew; niece; first cousin. This definition includes the above relatives, if of half-blood, and those of preceding generations as denoted by prefixes of grand, great, or great great.
2. A stepmother, stepfather, stepbrother, or stepsister.
3. A relative by adoption following entry of the interlocutory order: the same relatives, by adoption, as listed in the two preceding groups.
4. A relative by marriage. The spouse of any person specified in the three preceding groups even after the marriage is terminated by death or divorce.
5. Any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. Such relationships include great great great grandparents, great great uncle or aunt or a first cousin once removed, etc.

VA.R. Doc. No. R94-18; Filed September 21, 1993, 12:43 p.m.

**DEPARTMENT OF THE TREASURY (THE TREASURY
BOARD)**

Title of Regulation: VR 640-02. Virginia Security for Public Deposits Act Regulations.

Statutory Authority: § 2.1-364 of the Code of Virginia.

Effective Date: November 18, 1993.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Robert S. Young, Director of Financial Policy, Department of the Treasury, 101 North 14th Street, 3rd

Floor, Richmond, VA 23219, telephone (804) 225-2142. There may be a charge for copies.

Summary:

The following regulations are necessary to provide adequate protection for public funds on deposit in financial institutions under the Virginia Security for Public Deposits Act (§ 2.1-359 et seq. of the Code of Virginia).

The amendment to § 1 clarifies the duties and responsibilities of the State Treasurer and financial institutions under the Act. The amendment to § 7 defines current market value and clarifies the responsibility of the qualified public depository to maintain sufficient collateral in relation to current deposits. The amendment to § 8 requires a depository's Board of Directors to approve the "Public Deposit Security Agreement" executed among itself, the Treasury Board, and its eligible escrow agent, with such approval being reflected in the minutes of the Depository's Board of Director's meeting and maintained as an official record. The amendment to § 9 requires escrow agents, at the time of a collateral substitution, to calculate adjustments to market value of collateral identified as "difficult-to-value" or "subject to rapid declines in value," as determined by the State Treasurer. The amendment to § 10 defines current public deposits. The amendment to § 11 requires financial institutions to have an independent certified public accountant or its internal audit department certify annually that public deposits reported to the State Treasurer under the Act are accurately reported. The new § 13 reinforces the authority of the Treasury Board to enact policy guidelines should qualified public depositories fail to comply with the provisions of the Act or regulations. The new § 14 establishes criteria for the selection of escrow agents by public depositories and outlines the responsibilities of the State Treasurer and public depositories to ensure adherence to these criteria. Other changes to the regulations and the accompanying forms are either clarifying or cosmetic in nature or necessary to conform with statutory changes.

In review of all comments from interested parties, the following changes were incorporated into the final regulations: eliminated the requirement to report average daily market value of collateral on the monthly depository report; changed the requirement for only having an independent certified public accounting firm (CPA) certify annual public deposits to include having a CPA or the financial institution's internal audit department; returned the statement of 10 business days for reporting purposes; and changed the requirement for execution of new agreements from merger, acquisition, or name change to name change only.

Final Regulations

VR 640-02. Security for Public Deposits Act Regulations.

§ 1. General.

The definitions provided by § 2.1-360 of the Code of Virginia [;] shall be used throughout these regulations unless the context requires otherwise.

The Treasury Board has designated the State Treasurer to be the chief administrative officer with respect to the provisions of the Virginia Security for Public Deposits Act [(the "Act")] (§ 2.1-359 et seq. of the Code of Virginia) and the State Treasurer reserves the right to designate a representative to act on his behalf.

The primary responsibility for [determining that compliance with] the Act [is being complied with] rests upon the financial institutions that accept and hold public deposits. [If the deposit is a "public deposit," the deposit must be secured pursuant to the Act.] If a [financial institution officer depositor] is unable to ascertain whether a particular deposit is a "public deposit" for purposes of the Act, he should obtain the essential details and communicate with the [public depositor, the financial institution's counsel, or the] State Treasurer's office [by the use of a notice of election form]. [If the deposit is a "public deposit" the pertinent inquiry is whether the deposit either must be secured pursuant to the Code of Virginia, or whether the public depositor elects to require security for the deposit.]

§ 2. Effective date.

These regulations, as amended, shall be effective on and after ~~October 31, 1991~~ November [18] , 1993 .

§ 3. Required collateral for banks.

The required collateral of a national or state chartered bank to secure public deposits shall be determined according to the following applicable criteria and shall consist of securities qualifying as eligible collateral pursuant to these regulations which have a value for collateralization purposes not less than:

1. Fifty percent. Fifty percent of the actual public deposits held at the close of business on the last banking day of the immediately preceding month, or 50% of the average balance of all public deposits for the immediately preceding month, whichever is greater;

2. Seventy-five percent. In the event a bank's average daily public deposits for the immediately preceding month exceed one-fifth of its average daily total deposits, the required collateral will be 75% of the actual public deposits held at the close of business on the last banking day of the immediately preceding month, or 75% of the average balance of all public deposits for the immediately preceding month, whichever is greater;

3. One hundred percent. In the event a bank's average daily public deposits for the immediately preceding month exceed one-fifth of its average daily total deposits and the bank has not been actively engaged in the commercial banking business for at least three years, or in the event that a bank's average daily public deposits for the immediately preceding month exceed one-third of its average daily total deposits, or in the event that a bank has not been actively engaged in the commercial banking business for at least one year, the required collateral will be 100% of the actual public deposits held at the close of business on the last banking day of the immediately preceding month, or 100% of the average balance of all public deposits for the immediately preceding month, whichever is greater.

In the event a bank has violated the pledging statutes and regulations or for other reasons deemed sufficient, such as the financial condition of the bank [or the reasons referred to in § 13], the Treasury Board may increase the bank's ratio of required collateral to 100% of its actual public deposits.

§ 4. Required collateral for savings institutions.

The required collateral of a savings institution to secure public deposits shall consist of securities qualifying as eligible collateral pursuant to these regulations which have a value, for collateralization purposes, not less than a sum equal to 100% of the average daily balance of public deposits held by such savings institution for the immediately preceding month, but shall not be less than 100% of the public deposits held by such savings institution at the close of business on the last banking day of the immediately preceding month.

In the event that a savings institution has violated the pledging statutes and regulations, or for other reasons deemed sufficient, such as the financial condition of the savings institution [or the reasons referred to in § 13], the Treasury Board may increase such savings institution's ratio of required collateral above 100% of its actual public deposits.

§ 5. Average daily balance computation.

The average daily balance for any month of all public deposits held during the month shall be derived by dividing the sum of the daily balances of such deposits for the month of any item being computed by the number of calendar days in the month.

In computing the amount of public deposits and the average balance of public deposits to be collateralized during any month, there shall be excluded the amount of each deposit which is insured by federal deposit insurance.

§ 6. Eligible collateral.

A. Securities eligible for collateral are limited to:

1. Obligations of the Commonwealth. Bonds, notes and other evidences of indebtedness of the State of Virginia, and securities unconditionally guaranteed as to the payment of principal and interest by the State of Virginia.

2. Obligations of the United States. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof.

3. Obligations of Virginia counties, cities, etc. Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body of the State of Virginia upon which there is no default provided that such bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body are either direct legal obligations of, or unconditionally guaranteed as to the payment of principal and interest by, the county, city, town, district, authority or other public body in question and revenue bonds issued by agencies or authorities of the State of Virginia or its political subdivisions upon which there is no default and which are rated BBB or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

4. Obligations of [*the*] International Bank for Reconstruction and Development, African Development Bank, and Asian Development Bank. Bonds and other obligations issued, guaranteed, or assumed by the International Bank for Reconstruction and Development by the African Development Bank, or by the Asian Development Bank.

5. Obligations partially insured or guaranteed by any U.S. Government Agency.

6. Obligations (including revenue bonds) of states, other than Virginia, and their municipalities or political subdivisions rated A or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

7. Corporate Notes rated AA by both ~~Standard & Poor's~~ and ~~Moody's~~ Moody's Investors Services, Inc. and Standard & Poor's Corporation with a maximum maturity of 10 years.

8. Any additional securities approved by the Treasury Board pursuant to § 2.1364(d) [*for which written notification to qualified public depositories from the State Treasurer will be provided*].

B. No security which is in default as to principal or interest shall be acceptable as collateral.

C. No qualified public depository shall utilize securities issued by itself, its holding company, or any affiliate for

purposes of collateralizing its public deposits.

D. Securities excluded by action of the Treasury Board pursuant to § 2.1-364(d) shall not be acceptable. [*Written notification of securities excluded will be provided to qualified public depositories by the State Treasurer.*]

§ 7. Valuation of collateral.

Each qualified public depository shall value its securities for reporting purposes at [~~their~~] current market value as of the close of business on the last banking day of the immediately preceding month. [*In the event the market value of the collateral declines by 10% or more between said date and the date of submitting the monthly report to the Treasury Board, the market value on the submission date shall be used to determine any additional collateral requirements. At all times the current market value of collateral must be equal to or greater than a depository's required collateral as defined in §§ 3, 4 and 8 of these regulations. Current market value is defined as the market value of a security priced on a same day basis or no older than one business day. Business day is defined as the close of a commercial business at 5 p.m.*]

The State Treasurer, upon written notice to any or all qualified public depositories and eligible escrow agents, may require as deemed necessary for reporting purposes that certain securities that are difficult-to-value or subject to rapid [~~decline declines~~] in value or otherwise represent a risk of decrease in value be valued at a rate less than 100% of their market value.

§ 8. Deposit of collateral.

No qualified public depository shall accept or retain any public deposit which is required to be secured unless it has previously executed a "Public Deposit Security Agreement," ~~and approved by the depository's Board of Directors or Loan Committee, with such approval reflected in the minutes of said board or committee.~~ *The depository shall maintain the security agreement as an official record continuously from the time of its execution. The depository must also have deposited eligible collateral, as defined in these regulations, equal to its required collateral, determined as herein provided, with an eligible escrow agent or agents approved by the Treasury Board State Treasurer. Each depository is responsible for providing a written notification and executing new agreements upon its [~~merger, acquisition, or~~] name change.*

Whether or not a qualified public depository has eligible collateral deposited as heretofore provided at the time it receives a public deposit, if such deposit would result in an increase in the qualified public depository's required collateral computed as of the day on which the deposit is received, such qualified public depository shall immediately deposit sufficient securities to increase its collateral to an amount equal to that determined pursuant to § 3 or § 4 of these regulations, whichever is applicable, utilizing the qualified public depository's actual public

Final Regulations

deposits held at the close of business on the [*banking*] day such deposit is received in lieu of those held at the close of business on the last banking day in the immediately preceding month. [*Banking day is defined as the financial institution's close of business at 2 p.m.*] Written notice of deposit of collateral shall be submitted to the State Treasurer.

At the time of the deposit of registered securities, the qualified public depository owning the securities shall attach appropriate bond power forms as required to allow the State Treasurer to transfer ownership of such registered securities for the purpose of satisfying the qualified public depository's liabilities under the Act in the event the collateral needs to be liquidated.

§ 9. Substitution of eligible collateral.

A substitution of eligible collateral may be made by the qualified public depository at any time provided that the [*current*] market value of the securities collateral substituted is equal to or greater than the [*current*] market value of the securities collateral withdrawn.

At the time of making a collateral substitution, the qualified public depository shall prepare a request for the substitution upon a form approved by the State Treasurer and deliver the original to the escrow agent and a copy to the State Treasurer. The escrow agent shall not allow a collateral substitution unless the [*current*] market value of the securities collateral to be substituted is equal to or greater than the [*current*] market value of the securities collateral to be withdrawn. [*Current market value for the escrow agent in regards to a substitution is the market value of a security priced on a same day basis or no older than one business day prior to the date of the substitution.*] The escrow agent shall calculate adjustments to the [*current*] market value of collateral that the State Treasurer has identified as difficult-to-value or subject to rapid [~~decline~~ declines] in value [*or otherwise represents a risk of decrease in value*] at the time of substitution to determine if the market value is equal to or greater than the value of the collateral to be withdrawn in accordance with § 7 of this regulation. [*In the event the market value of the substituted collateral is not equal to or greater than the value of the securities collateral to be withdrawn as determined in accordance with § 7 of this regulation, the qualified public depository ; to substitute the collateral, shall receive obtain written approval of the State Treasurer.*]

In the event the current market value of the substituted collateral is not equal to or greater than the value of the collateral to be withdrawn as determined in accordance with § 7 of this regulation, the qualified public depository shall obtain written approval of the State Treasurer to substitute the collateral.]

§ 10. Withdrawal of collateral.

A qualified public depository shall not be permitted to

withdraw collateral previously pledged without the prior written approval of the State Treasurer. The State Treasurer may grant such approval only if the qualified public depository certifies in writing that such withdrawal will not reduce the [*current*] market value of its pledged collateral below its required collateral as defined by these regulations, and this certification is substantiated by a statement of reporting the qualified public depository's current public deposits which indicates that after withdrawal such deposits will continue to be secured to the full extent required by the law and regulations. *Current public deposits are defined as the amount of public deposits held at the time of withdrawal of collateral. If a qualified public depository cannot determine the amount of current public deposits [~~during the month~~] when collateral is to be withdrawn, the depository shall request an exception to this provision from the State Treasurer stating why the depository cannot comply and how it intends to determine the current public deposit balance [~~during the month~~] under this provision. The request for exception must be in writing and formally approved by the State Treasurer.* The escrow agent shall not permit the qualified public depository to withdraw collateral without the written approval of the State Treasurer.

§ 11. Reports by qualified public depositories.

Within 10 [business] days after the end of every month each qualified public depository shall submit to the State Treasurer a written report, under oath, signed by an authorized officer of the financial institution indicating the total amount of public deposits held by it at the close of business on the last [*business banking*] day in the immediately preceding month; the average daily balance for such month of all secured public deposits held by it during the immediately preceding month; the average balance of all bank deposits for the immediately preceding month; the total required collateral; and the total par value [; and] the total [*current*] market value of collateral [; and the average daily market value] of collateral for the immediately preceding month . Included with this report shall be a detailed schedule of pledged collateral at its to include, but not limited to, the [*security*] description, coupon rate, [~~cusip~~ CUSIP (Committee on Uniform Securities Identification Procedures)] number, maturity date, debt rating by Moody's Investors Services, Inc. or Standard & Poor's Corporation, par value amount, book or principal value amount and current market value amount , determined pursuant to § 7 of these regulations.

At the request of any public depositor for which it holds deposits, within 10 [business] days after the end of any month, the qualified public depository shall submit a statement indicating the total secured public deposits in each account to the credit of such depositor on the last [*business banking*] day in the immediately preceding month and the total amount of all secured public deposits held by it upon such date.

Within the first 10 [business] days of each calendar quarter, every qualified public depository shall submit to [each public depositor for whom it holds] secured [public deposits the State Treasurer] a report indicating the account number, type of account, amount of federal deposit insurance applied, total amount on deposit and total amount on deposit to be secured by its pledged collateral [or a combined listing containing the same information as an attachment to the "Public Depository Monthly Report"] as of the close of business on the last banking day of the calendar quarter being reported. At the same time [a copy of this report shall be attached to the "Public Depository Monthly Report" submitted to the State Treasurer every qualified public depository shall submit to each public depositor for whom it holds public deposits, a report indicating the account number, type of account, and total account amount to be secured by its pledged collateral] .

[By July 1, every qualified public depository shall submit to the State Treasurer an annual certification from an independent certified public accountant, attesting to the depository's compliance with this section's reporting requirements and attesting to the accuracy of reports submitted thereunder for their previous fiscal year.]

[With the submission of the "Public Depository Monthly Report" to the State Treasurer for the month ending on June 30, qualified public depositories shall attach an annual certification from an independent certified public accountant or their internal audit department, attesting to the accuracy of the public deposit balances reported to the State Treasurer during their previous fiscal year.]

§ 12. Reports by State Treasurer.

The State Treasurer shall report to the auditors of any public depositor, upon their written request, the status of any qualified public depository's collateral account and its compliance with the reporting requirements of the Act. The State Treasurer shall notify any public depositor that maintains accounts with any bank or savings institution of any irregularities, including, but not limited to, the late filing of the required monthly reports or [of] deficiencies in the qualified public depository's eligible collateral at any time. The Treasury Board shall be notified of the sending of any reports of irregularities required herein no later than at its next regularly scheduled meeting.

§ 13. Compliance requirements.

Pursuant to the power granted under § 2.1-364 of the Code of Virginia, the Treasury Board may establish criteria for determining the continued eligibility of public depositories to accept public deposits. By formal request, any depository may receive a copy of the approved policy enacted by the Treasury Board. The State Treasurer shall notify [any] public [depositor that maintains accounts with any bank or savings institution depositories] of any policy irregularity [regarding their depository] .

§ 14. Criteria for the selection of escrow agents.

Pursuant to the powers granted to the Treasury Board by § 2.1-362 of the Code of Virginia, the State Treasurer has determined that the selection of an escrow agent or agents is consistent with administration of the Act and the State Treasurer shall define all escrow agent criteria under an agreement labeled "Public Deposit Security Agreement" to be signed and sealed by an authorized officer for the escrow agent, depository and State Treasurer. A depository may have no more than one escrow agreement in effect at any given time period. Each depository and escrow agent is responsible for providing a written notification and executing new agreements upon their [merger, acquisition, or] name change. Every qualified public depository shall comply with this section [of the regulations] within 60 days of [their the] effective date [of these regulations] .

An escrow agent selected by a qualified public depository for the purpose of holding collateral [pledging pledged] to the Treasury Board under the Act must meet the following requirements:

1. The escrow agent must sign a "Public Deposit Security Agreement," which shall also be signed by the depository and the State Treasurer, acting on behalf of the Treasury Board.

2. The escrow agent shall hold in a separate account for the Treasury Board eligible collateral pledged under the provisions of the Act and, if acting as escrow for more than one public depository, the collateral must be accounted for in a manner that will allow separate reporting by account and public depository. The escrow shall hold the eligible collateral in a section of the institution which is separate from daily activities performed by that institution such as its trust department and be held accountable for the regulatory requirements of such department.

3. [The escrow agent shall be an independent entity not affiliated in any way with the public depository in the performance of its duties on behalf of the Treasury Board. The escrow agent shall be an independent entity in the performance of its duties on behalf of the Treasury Board. The escrow agent may not be the depository itself, its holding company, or any affiliate of the depository.]

4. The escrow agent must be able to [hold all eligible collateral and] ascertain whether pledged collateral is eligible in accordance with § 6 of these regulations. The escrow agent shall distribute all interest, dividends, or other income for the pledged securities to the depository and shall be payable thereto provided the escrow agent has not received written notice from the Treasury Board that the depository is in a condition of "default or insolvency" as defined in the Act, in which event the escrow agent shall hold

Final Regulations

such income subject to the order of the Treasury Board.

5. The escrow agent shall allow the Treasury Board to examine pledged securities held as collateral at any time, upon 24-hour notice, during the regular business hours of the escrow agent without cost to the Treasury Board. Upon notification [from the Treasury Board] of the "default or insolvency" of a depository [by the Treasury Board], the escrow agent shall deliver the pledged securities to the Treasury Board for disposition as provided in the Act, and take a receipt thereof, which shall relieve the escrow agent from any further liability to the depository.

6. The escrow agent shall price securities held as collateral at a [market price current market value] no older than one business day from the date of a substitution of collateral and from the [last business close of business on the last banking] day of the month for monthly reporting purposes.

7. The escrow agent shall adhere to the reporting requirements as detailed in the "Public Deposit Security Agreement."

8. The escrow agent shall allow substitutions in accordance with § 9 of these regulations. [The escrow agent must ensure that market values used to price substituted securities will be no older than the previous day's prices.]

9. The escrow agent shall ensure that withdrawals of collateral will be in accordance with § 10 of these regulations.

The State Treasurer, acting on behalf of the Treasury Board, will determine that an escrow agent can meet the criteria established under this section prior to executing the "Public Deposit Security Agreement." The State Treasurer may request information from an escrow agent to substantiate its ability to meet the aforementioned criteria.

In the event an escrow agent violates the requirements of the "Public Deposit Security Agreement," the State Treasurer shall notify the escrow agent and applicable public depositories of the violation and require the escrow agent to comply with all terms of the agreement. The escrow agent must provide the State Treasurer and public depositories a written statement [, within 30 days of the notification,] outlining how and when the violations will be remedied [within 30 days of the notification]. This statement must be acceptable to the State Treasurer, who will monitor adherence to it. If the escrow agent fails to provide a statement or adhere to it or violates the agreement three times within a two-year period, the State Treasurer will classify such an escrow agent as "disqualified" as an escrow agent under the provisions of the Act and notify all parties. Qualified public depositories shall have 90 days to select a new escrow agent after

such a disqualification.

In the event an escrow agent is classified as "disqualified," the term of suspension shall be for one year from the date of disqualification. After "disqualification," an escrow agent must [write to request from] the Treasury Board [for] approval to be reinstated as an eligible escrow agent.

§ 13. § 15. Suspension of authority to receive public deposits.

[For failure to comply with the Act or the regulations, the Treasury Board may remove from a qualified public depository the authority to receive further public deposits. Such depository remains fully subject to the provisions of the Act and the regulations as to any public deposits that it continues to hold during a period of removal of its authority to receive further public deposits, including without limitation the collateralization and reporting requirements, and continues to be deemed a qualified public depository for purposes of §§ 2.1-363 and 2.1-363.1 of the Act.]

[For failure to comply with the Act or the regulations, the Treasury Board may rescind the authority of a qualified public depository to receive further public deposits in accordance with § 13 of these regulations. A depository that continues to hold public deposits after its authority to do so has been rescinded remains fully subject to the provisions of the Act. This includes, without limitation, continuing to meet collateralization and reporting requirements and acting as a qualified public depository for purposes of §§ 2.1-363 and 2.1-363.1 of the Act.]

§ 14. § 16. Exception reports by public depositories.

Upon receipt of the quarterly public depositor report, as stated in § 11, public depositories shall notify the State Treasurer of any unresolved discrepancy between the information provided and the public depositories' records.

V.A.R. Doc. No. R94-50; Filed September 28, 1993, 3:52 p.m.

Treas. Form 1001

PUBLIC DEPOSIT SECURITY AGREEMENT
To Secure Public Deposits Pursuant to the
Virginia Security for Public Deposits Act

This Agreement made as of the _____ day of _____, 19____, by and among the TREASURY BOARD OF THE COMMONWEALTH OF VIRGINIA (hereinafter the "Board"), _____ of _____, Virginia (hereinafter "Depository"), and _____ of _____ (hereinafter "Escrow Agent"), is for the provision of banking and escrow services, as further defined below.

WHEREAS, the Virginia Security for Public Deposits Act, §§ 2.1-359 through 2.1-370 of the Code of Virginia (the "Act"), as amended, requires "qualified public depositories" to deposit "eligible collateral" equal to the "required collateral," all as defined in the Act, with an escrow agent approved by the Board; and

WHEREAS, the regulations promulgated by the Board pursuant to the Act (the "Regulations") require all qualified public depositories and escrow agents to execute a "Public Deposit Security Agreement," which sets forth procedures for the pledge and deposit of eligible collateral;

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, the parties have agreed and do hereby enter into this Agreement according to the provisions set out herein:

1. The Board represents to the Depository and the Escrow Agent that (a) the Board consists of the State Treasurer, the State Comptroller, the State Tax Commissioner, and four citizen members appointed by the Governor; and (b) the Board is duly authorized to enter into this Agreement.

2. The Depository and the Escrow Agent represent to the Board that (a) they have read and understand the Act and the Regulations promulgated thereunder and agree to comply with all provisions thereof; (b) they are duly authorized to execute this Agreement and to perform their obligations hereunder and have taken all necessary action to authorize such execution and performance; (c) the persons signing this Agreement on their behalf are duly authorized to do so; and (d) the execution and performance of this Agreement will not violate any law, ordinance, charter, by-law or rule applicable to them or any agreement by which they are bound or by which any of their assets are affected.

3. The Depository represents and warrants to the Board that (a) the Depository is and will be at all times while this agreement is in effect a "qualified public depository" as defined in the Act; (b) at no time will the Depository allow the market value of its collateral pledged hereunder to be less than its "required collateral" as defined by the Act; (c) all securities deposited with the Escrow Agent hereunder are, and will be, eligible for securing public deposits pursuant to § 6 of the Regulations; (d) all "eligible collateral" pledged to the Board will be free from any lien or encumbrance; (e) the Depository's board of directors or loan committee will approve this Agreement, reflect its approval in the minutes of the Board or committee, and will supply the Board with a certified copy of the resolution and a certified copy of the minutes of the meeting showing the directors' acceptance of the terms and conditions of this Agreement within 60 days of the date of this Agreement; and (f) the Depository will maintain this Agreement and any transmission under this Agreement as an official record within the meaning of § 1423 (a) of Title 11 of the United States Code, as amended, continuously from the time of its execution.

4. The Depository, in return for the privilege of holding public deposits and in accordance with the Act, and intending to be legally bound, hereby grants to the Board, as a secured party, a security interest pursuant to the Uniform

Commercial Code (§§ 8.1-101 through 8.11-108 of the Code of Virginia, as amended) in all "eligible collateral" deposited with the Escrow Agent and pledged as collateral for the public deposits held by the Depository pursuant to the Act and the Regulations, and any substitutions therefore in accordance with § 9 of the Regulations. The Depository will ensure that the Board's security interest is perfected by transferring the collateral securities to the Escrow Agent in accordance with one of the methods prescribed by § 8.8-313(1)(a) through (j) of the Code of Virginia.

5. The Escrow Agent acknowledges the receipt of pledged securities and will segregate such pledged securities from other securities, if any, held by it for the account of the Depository.

6. The Escrow Agent will have no responsibility for ascertaining whether the Depository's pledged "eligible collateral" is equal to its "required collateral."

7. The Escrow Agent will mail monthly reports to the Board and the Depository no later than the eighth day following the end of the preceding month. The Escrow Agent will include the following information in the monthly report: the Depository's full name, address and account number; acknowledgment that the collateral is pledged to the Board; information concerning each security, including full description, cusip number (if available), coupon rate, maturity date, original par value, book value of pooled securities, and current market value of each security; and the total of the original par value, book value, and current market value of all securities held as collateral. The Escrow Agent will confirm in writing to the Board and the Depository all deposits, substitutions and withdrawals at the time of their acceptance. This confirmation shall include the Depository's full name, address, account number, full description of security, cusip number (if available), coupon rate, maturity date, original par value or book value of pooled securities and current market value. The confirmation shall also include the debt rating by Standard and Poor's, Inc. or Moody's Investors Service, Inc. (if applicable) in accordance with § 6 of the regulations for any deposit or substitution of collateral.

8. Each Depository and Escrow Agent will provide written notification to the Board upon any name change, and will execute a new Agreement to reflect its changed status within a reasonable time following the change.

9. The Depository and the Escrow Agent will each have such reasonable contracts of insurance covering the physical eligible collateral which it holds or will hold for the Board as are customarily made with respect to property of a similar nature held by financial institutions.

10. Neither the Depository nor the Escrow Agent will assign this Agreement or enter into sub-contracts for any work described herein without obtaining the prior written approval of the Board.

11. This writing constitutes the entire Agreement among the parties, supersedes any existing agreement among the parties hereto relative to the matters contained herein, and may be modified only by written amendment executed by all parties hereto. Any party to this Agreement may, effective thirty days from the date of written notice to the other parties, terminate its participation under this Agreement for any reason. Upon termination of this Agreement, the Escrow Agent shall, within ten days from the date of termination, transfer all eligible collateral it holds pursuant to this Agreement either to an eligible Escrow Agent designated by the Depository or, if the Depository fails to make such a designation within ten days from the date of termination, to the public depository(ies).

12. This Agreement will be governed by the laws of the Commonwealth of Virginia.

13. When any written notice, request, demand or report is required or may be given hereunder, it will be deemed sufficient if the party giving such notice, request, demand, or other advice delivers the same to the other party by U. S. mail, postage prepaid, or by other superior mailing, or by hand delivery. All notices, requests, demands or reports delivered by mail or by hand will be deemed to have been given when received by any party hereto at the following addresses:

Depository: Such office or mailing address as stated on the Notification of Address Form attached hereto.

Escrow Agent: Such office or mailing address as stated on the Notification of Address Form attached hereto.

Board: Office address: Department of the Treasury
Monroe Building, 3rd Floor
Richmond, Virginia 23219
ATTN: Treasury Board

Mailing address: Department of the Treasury
P. O. Box 1879
Richmond, Virginia 23215-1879
ATTN: Treasury Board

or to such other addresses of which any party hereto has notified the other parties hereto in writing.

14. This Agreement will be executed in triplicate by the parties hereto, each of which will retain one original hereof.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement under seal as of the date first above written.

TREASURY BOARD OF THE COMMONWEALTH OF VIRGINIA

BY: _____ Date _____
Authorized Officer
Name: _____
Title: _____

QUALIFIED PUBLIC DEPOSITORY

(Name of Financial Institution) (SEAL) Date _____
BY: _____ Attest:
Authorized Officer
Name: _____ Name: _____
Title: _____ Title: _____

ESCROW AGENT

(Name of Institution) (SEAL) Date _____
BY: _____ Attest:
Authorized Officer
Name: _____ Name: _____
Title: _____ Title: _____

NOTIFICATION OF ADDRESS
(DEPOSITORY)

Office address: _____

Mailing address: _____

NOTIFICATION OF ADDRESS
(ESCROW AGENT)

Office address: _____

Mailing address: _____

EXHIBIT 3

PUBLIC DEPOSITORY MONTHLY REPORT REGULATIONS

TO: The Treasury Board, Commonwealth of Virginia
P. O. Box 1879
Richmond, Virginia 23215-1879

03 SEP 28 PM 3:56

FROM: _____

- 1) Total All Public Deposits on _____ (Month Ending)
 - Demand: \$ _____
 - Time/Savings: \$ _____
 - TOTAL: \$ _____
 - Less FDIC: \$ _____
 - NET: \$ _____
- 2) Average Daily Balance All Public Accounts:
 - Demand: \$ _____
 - Time/Savings: \$ _____
 - Less FDIC: \$ _____
 - TOTAL: \$ _____
- 3) Average Daily Total Deposits (Includes all deposits of Financial Institution) \$ _____
- 4) Percentage of Item 2 to Item 3 above: \$ _____
- 5) Required Collateral: _____ % of the larger (1) or (2) above: \$ _____
- 6) Pledged Collateral current month ending:
 - From Schedule A: Original Par Value \$ _____
 - or Book Value for Pooled Securities
 - Current Market Value \$ _____
 - or Adjusted Current Market if Pooled Securities

I hereby certify that the foregoing information and attachments are true and correct to the best of my knowledge and belief, and that at no time during the month has the financial institution's pledged collateral been less than its required collateral.

FINANCIAL INSTITUTION: _____

Signature: _____ Title: _____

State of Virginia, _____ of _____

The foregoing officer acknowledged under oath before me, a Notary Public in and for the State and city/county aforesaid, that the statements and amounts herein are correct and true to the best of his/her knowledge and belief, this _____ day of _____

My Commission expires: _____ (Notary Public)

Final Regulations

REGISTRAR OF REGULATIONS
EXHIBIT 3
 93 SEP 28 PM 3:56
 (DEPOSITORY LETTERHEAD)

The Treasury Board
 Commonwealth of Virginia
 Bank 1879
 Richmond, Virginia 23215-1879
 Gentlemen:

Listed below are the Public Depositors for whom (Depository Institution)
 held secured public deposits as of the close of business for month ending
(date)

NAME OF PUBLIC DEPOSITOR	TYPE OF ACCOUNT AND NUMBER	TOTAL AMT	FDIC INSURED	NET BALANCE
	DEMAND			
Customer A	DDA 4000001	\$ 2,000		\$ 102,000
	DDA 5000001	200,000	\$ 100,000	
	TIME/SAVINGS			
Customer A	COD 3000001	200,000	100,000	100,000
	DEMAND			
Customer B	DDA 6000001	5,000		
	DDA 6000002	400,000	100,000	305,000
	TIME/SAVINGS			
Customer B	COD 7000001	17,000		
	COD 7000002	100,000	100,000	17,000
GRAND TOTAL (Line 1 of Public Depository Monthly Report)				\$ 524,000

*Can be computer printout generated by the institutions system or each individual letter to each public depositor.

SCHEDULE "A" Listing of Collateral Pledged to Treasury Board

Detailed schedule of pledged collateral at its current market value, determined in accordance with the market value as of the close of business on the last banking day in the preceding month, as of _____ (date)

Attach list, or describe, giving the following information:

Original Par Value	Book Value	Description	Cusip #	Coupon	Maturity	Current Market Value	Debt Rating (if applicable)
--------------------	------------	-------------	---------	--------	----------	----------------------	-----------------------------

Total of Original Par Value

Total of Book Value

Total of Current Market Value

Original Par Value or Book Value to be listed on Exhibit 3.

Less 20% Adjustment: < _____ >
 for pooled securities or Agency CMO's

Total Current Market Value: _____
 to be listed on Exhibit 3

REGISTRAR OF REGULATIONS
 93 SEP 28 PM 3:56

EXHIBIT 5

REGISTRAR OF REGULATIONS

93 SEP 28 PM 3:56

(DEPOSITORY LETTERHEAD)

WITHDRAWAL OF COLLATERAL

The Treasury Board
Commonwealth of Virginia
P. O. Box 1879
Richmond, Virginia 23215-1879

Gentlemen:

Enclosed are the original and two copies of our letter to _____
(escrow agent)
requesting a withdrawal of collateral.

The following data is submitted for your information:

Total Current Public Deposits on _____
(date) \$ _____

Pledged Collateral:

Current Market Value on _____
(date) \$ _____

Current Market Value on
Collateral remaining after withdrawal
(Including 20% adjustment when appropriate) \$ _____

Please indicate your approval by signing the original and sending it to the escrow agent, and retain one copy for your records.

Sincerely,

(Depository Institution)

EXHIBIT 5 (Continued)

(DEPOSITORY LETTERHEAD)

WITHDRAWAL OF COLLATERAL

TO: _____
(Escrow Agent)

You hold in the account entitled _____, as escrow agent
(escrow agent)
for the Treasury Board of the Commonwealth of Virginia to secure public deposits with
_____ the following securities:
(depository)

<u>Original Par Value</u>	<u>Description</u>	<u>Coupon</u>	<u>Maturity Date</u>	<u>Current Market Value</u> (@ 80% if appropriate)
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Please release these securities from the above account and deliver to:

When this transaction has been completed, please send your required confirmation to the Treasurer of Virginia, P. O. Box 1879, Richmond, Virginia 23215-1879.

Sincerely,

(Depository Institution)

Approved: Treasury Board
Commonwealth of Virginia

By: _____

Date: _____

Final Regulations

EXHIBIT 6 REGISTER OF REGULATIONS
93 SEP 28 PM 3:56
(DEPOSITORY LETTERHEAD)

REQUEST FOR SUBSTITUTION OF COLLATERAL

TO: _____

(Escrow Agent)

You hold in the account entitled _____, as escrow agent for the Treasury Board of the Commonwealth of Virginia to secure public deposits with _____, the following securities:

Original Face Value of Book	Cusip # & Description	Coupon	Maturity Date	Current Market Value (80% if appropriate)	Debt Rating (if applicable)

Please release these securities from the above account and deliver to: _____
(disposition of securities being released as instruction for escrow agent)
Accept in substitution the following securities to be held in the same manner as the securities being released:

Original Face Value of Book	Cusip # & Description	Coupon	Maturity Date	Current Market Value (80% if appropriate)	Debt Rating (if applicable)

When this transaction has been completed, please send your required confirmation to the Treasurer of Virginia, P. O. Box 1879, Richmond, Virginia 23215-1879.

Sincerely,

(Depository Institution)

c: Treasury Board
Commonwealth of Virginia
P. O. Box 1879
Richmond, Virginia 23215-1879
OR
Approved: Treasury Board
Commonwealth of Virginia
BY: _____
DATE: _____

EXHIBIT 7 REGISTER OF REGULATIONS
93 SEP 28 PM 3:56
(DEPOSITORY LETTERHEAD)

DEPOSIT OF COLLATERAL

TO: _____

(Escrow Agent)

We have a Public Deposit Security (Safekeeping) Agreement with you entitled _____ as escrow agent for the Treasury Board of the Commonwealth of Virginia to secure public deposits with _____ (depository).

Please accept the following securities for this account to be held as set forth in the agreement:

Original Face Value of Book	Cusip # & Description	Coupon	Maturity Date	Current Market Value (80% if appropriate)	Debt Rating (if applicable)

When this transaction has been completed, please send your required confirmation to the Treasurer of Virginia, P. O. Box 1879, Richmond, Virginia 23215-1879.

Sincerely,

(Depository Institution)

c: Treasury Board
Commonwealth of Virginia
P. O. Box 1879
Richmond, Virginia 23215-1879

Form No. 1004 Treas.

REGISTRAR OF REGULATIONS
COMMONWEALTH OF VIRGINIA
TREASURY BOARD

NOTICE OF ELECTION TO
REQUIRE SECURITY FOR PUBLIC DEPOSITS

_____ , 19____

Name of Bank

Street or P. O. Box

City State Zip

Notice is hereby given that effective _____, 19____ I, _____
(Name of Officer)
_____ of _____
(Title of Office) (Location)

elect to require security pursuant to the Virginia Security for Public Deposits Act, Sec. 21-359, et seq., Code of Virginia (1950), as amended, for all public funds held in my name in the accounts as listed below and/or on the reverse side hereof. This election will remain in effect until rescinded by me or my successor(s) in office.

_____ Name	_____ Number
_____ Name	_____ Number
_____ Name	_____ Number

Signature

I acknowledge receipt of the foregoing notice and will comply therewith as of _____
pursuant to the Virginia Security for Public Deposits Act. (Date)

Attest: _____
Bank

Title: _____ By: _____

I acknowledge receipt of the foregoing notice;
TREASURY BOARD OF VIRGINIA
By: _____

White-Local Treasurer
Green-Bank Depository
Blue-Treasury Board

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER TWENTY-SEVEN (93)

VIRGINIA STATE FAIR RAFFLE AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the Virginia State Fair Raffle and Drawing Rules for the daily raffle drawings and the Virginia Lottery "Tropical Game Show," the two lottery promotional events which will be conducted during the 1993 Virginia State Fair. The events will take place at the fairgrounds in Richmond from September 23 - October 3, 1993. These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until October 4, 1993, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
Director
Date: September 20, 1993

VA.R. Doc. No. R94-45; Filed September 27, 1993, 9:49 a.m.

DIRECTOR'S ORDER NUMBER TWENTY-EIGHT (93)

"LOTTO BY MAIL PROMOTION"; FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Lotto By Mail Promotion" game rules for the Virginia Lottery's subscription promotional program to be conducted from Monday, September 20, 1993 through Friday, December 10, 1993. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: September 20, 1993

VA.R. Doc. No. R94-46; Filed September 27, 1993, 9:50 a.m.

DIRECTOR'S ORDER NUMBER TWENTY-NINE (93)

VIRGINIA'S THIRTY-SEVENTH INSTANT GAME LOTTERY; "MOVIES, MUSIC & MONEY," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's thirty-seventh instant game lottery, "Movies, Music & Money." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: September 20, 1993

VA.R. Doc. No. R94-47; Filed September 27, 1993, 9:50 a.m.

Virginia Tax Bulletin

Virginia Department of Taxation

OCTOBER 1, 1993

93-10

INTEREST RATES FOURTH QUARTER 1993

Rates remain unchanged: The federal rates for the fourth quarter of 1993 remain at 7% for tax underpayments (assessments), 6% for tax overpayments (refunds), and 9% for "large corporate underpayments" as defined in I.R.C. § 6621(c). Va. Code § 58.1-15 provides that the underpayment rate for Virginia taxes will be 2% higher than the corresponding federal rates. Accordingly, the Virginia rates for the fourth quarter of 1993 remain at 9% for tax underpayments, 6% for tax overpayments, and 11% for "large corporate underpayments".

Rate for Addition to Tax for Underpayments of Estimated Tax

Taxpayers whose taxable year ends on September 30, 1993: For the purpose of computing the addition to the tax for underpayment of Virginia estimated income taxes on Form 760C (for individuals, estates and trusts), Form 760F (for farmers and fishermen) or Form 500C (for corporations), the fourth quarter 9% underpayment rate will apply through the due date of the return, January 15, 1994.

Local Tax

Assessments: Localities assessing interest on delinquent taxes pursuant to Va. Code § 58.1-3916 may impose interest at a rate not to exceed 10% for the first year of delinquency, and at a rate not to exceed 10% or the federal underpayment rate in effect for the applicable quarter, whichever is greater, for the second and subsequent years of delinquency. For the fourth quarter of 1993, the federal underpayment rate is 7%.

Refunds: Localities which have provided for refund of erroneously assessed taxes may provide by ordinance that such refund be repaid with interest at a rate which does not exceed the rate imposed by the locality for delinquent taxes.

Recent Interest Rates

Accrual Period		Overpayment	Underpayment	Large Corporate
<u>Beginning</u>	<u>Through</u>	<u>(Refund)</u>	<u>(Assessment)</u>	<u>Underpayment</u>
1-JAN-87	30-SEP-87	8%	9%	—
1-OCT-87	31-DEC-87	9%	10%	—
1-JAN-88	31-MAR-88	10%	11%	—
1-APR-88	30-SEP-88	9%	10%	—
1-OCT-88	31-MAR-89	10%	11%	—
1-APR-89	30-SEP-89	11%	12%	—
1-OCT-89	31-MAR-91	10%	11%	—
1-APR-91	30-JUN-91	9%	10%	—
1-JUL-91	31-DEC-91	9%	12%	14%
1-JAN-92	31-MAR-92	8%	11%	13%
1-APR-92	30-SEP-92	7%	10%	12%
1-OCT-92	31-DEC-93	6%	9%	11%

For additional information: Contact the Taxpayer Assistance Section, Office of Taxpayer Services, Virginia Department of Taxation, P. O. Box 1880, Richmond, Virginia 23282-1880, or call the following numbers for additional information about interest rates and penalties.

Individual & Fiduciary Income Tax	(804) 367-8031
Corporation Income Tax	(804) 367-8036
Withholding Tax	(804) 367-8038
Soft Drink Excise Tax	(804) 367-8098
Aircraft Sales & Use Tax	(804) 367-8098
Other Sales & Use Taxes	(804) 367-8037

GOVERNOR

EXECUTIVE ORDER NUMBER SEVENTY-THREE (93)

PROVIDING FOR ASSISTANCE OF THE VIRGINIA NATIONAL GUARD TO THE VIRGINIA DEPARTMENT OF STATE POLICE FOR THE SOUTHERN GOVERNORS' ASSOCIATION/AFRICAN HEADS OF STATE SUMMIT

The Southern Governors' Association/African Heads of State Summit, September 19 - 22, 1993, will be hosted by the Commonwealth of Virginia and provides fortunate circumstances where numerous distinguished visitors, including African Heads of State and Southern Governors, will be visiting the Commonwealth of Virginia and the City of Richmond.

The presence of these distinguished visitors at the Southern Governors' Association/African Heads of State Summit, places substantial additional demands on the Executive Protection Unit of the Virginia Department of State Police for providing suitable law enforcement and related security, escort, and transportation services. It is not possible to provide these services without unduly detracting from the normal law enforcement functions of state and local law enforcement agencies in the Commonwealth.

In order to meet the need to provide appropriate law enforcement and related security, escort, and transportation services on behalf of the distinguished visitors attending the Southern Governors' Association/African Heads of State Summit and by virtue of the authority vested in me under Article V, Section 7 of the Constitution of Virginia and Title 44, including, but not limited to, Section 44-75.1 (3) of the Code of Virginia, I do hereby direct the Adjutant General of Virginia to employ sufficient National Guard personnel and other resources, in coordination with the Superintendent of State Police and with the approval of the Secretary of Public Safety, to provide appropriate law enforcement and related security, escort, and transportation services on behalf of the African Heads of State, Southern Governors, and other distinguished visitors attending and participating in the Southern Governors' Association/African Heads of State Summit, commencing on Thursday, September 16, 1993 and continuing until the Virginia State Police no longer need such support, but not later than Thursday, September 23, 1993.

The following conditions shall apply to the employment of the Virginia National Guard:

1. National Guard personnel employed pursuant to this executive order shall be limited to an average of not more than sixty (60) on state active duty per day.
2. In all instances, members of the Virginia National Guard shall remain subject to military command and not subject to civilian authorities. They shall, however, work in close cooperation with the Department of State Police.

3. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of the injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to Section 44-14 of the Code of Virginia, and subject to the concurrence of the Board of Military Affairs, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

This Executive Order shall be effective from September 16, 1993 and shall remain in full force and effect until midnight, September 23, 1993, unless sooner amended or rescinded by further executive order. That portion providing for benefits for members of the National Guard in the event of injury or death shall continue to remain in effect after termination of this Executive Order as a whole.

Given under my hand and under the seal of the Commonwealth of Virginia this 17th day of September, 1993.

/s/ Lawrence Douglas Wilder
Governor

V.A.R. Doc. No. R94-31; Filed September 23, 1993, 2:30 p.m.

EXECUTIVE ORDER NUMBER SEVENTY-SEVEN (93)

DECLARATION OF A STATE OF EMERGENCY ARISING FROM A FIRE IN CHESTERFIELD COUNTY, VIRGINIA

On the afternoon of July 24, 1993, a forest fire started

Governor

near the intersection of Nash and Woodpecker roads in Chesterfield County. The cause of the fire is unknown, although ground conditions were quite dry and the origin of the fire occurred at three separate locations. In order to "cool down" the fire head enough to allow ground-based firefighters to get close to the fire, it was necessary to use helicopter-borne water buckets from the Virginia Army National Guard. Also, accessibility to the fire by ground firefighters was limited by the terrain. The Virginia Department of Forestry requested Virginia National Guard assistance pursuant to a pre-existing agreement between the Department of Forestry and the Virginia National Guard. One National Guard helicopter with a crew of three was activated for a period of approximately seven hours on July 24, 1993. The fire was successfully contained by 9:00 P.M. on July 24, 1993.

The health and general welfare of the citizens of the affected locality required that state action be taken to help alleviate the conditions brought about by this situation, which constitutes an emergency as contemplated under the provisions of Section 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by Sections 44-75.1 and 44-146.17 of the Code of Virginia, as Governor, as Commander-in-Chief of the armed forces of the Commonwealth, and as Director of Emergency Services, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I do hereby proclaim that a state of emergency exists in the affected areas of the Commonwealth and direct that appropriate assistance be rendered by the agencies of the state government to alleviate these conditions.

I further direct that the Adjutant General of Virginia make available, on state active duty service, such members of the Virginia National Guard and such equipment as might be necessary to combat the fire in Chesterfield County.

Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

- (a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act; and, in addition,
- (b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and

his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to Section 44-14 of the Code of Virginia, and subject to the concurrence of the Board of Military Affairs, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

This Executive Order shall be retroactively effective to July 24, 1993, upon its signing, and shall remain in full force and effect until June 30, 1994, unless sooner amended or rescinded by further executive order. That portion providing for benefits for members of the National Guard in the event of injury or death shall continue to remain in effect after termination of this Executive Order as a whole.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 16th day of September, 1993.

/s/ Lawrence Douglas Wilder
Governor

VA.R. Doc. No. R94-30; Filed September 23, 1993, 2:30 p.m.

EXECUTIVE ORDER NUMBER SEVENTY-NINE (93)

RESCINDING EXECUTIVE ORDER NUMBER EIGHT (90)

On May 15, 1990, early in my tenure as Governor, and in light of the existing policies and laws that were in effect in South Africa which denied basic political and human rights to the black majority, I signed an Executive Order proscribing agencies and institutions of the Commonwealth from further investing in companies that were not substantively free of interests in that country. I also ordered that immediate steps be taken to begin the divestment of interests in such companies that were then owned by agencies and institutions.

Recent events in South Africa have signalled that the political disenfranchisement has ended. Most significantly, the establishment of a black majority commission to oversee the free elections and the transition to a new democratically-elected government marks the beginning of a system of government that recognizes the equality of rights of all persons.

In light of these historic changes, and the call by Mr. Nelson Mandela for all nations to lift their sanctions on South Africa, I have determined that the Executive Order

I invoked to demonstrate the unity of the citizens of the Commonwealth with the concepts of equality and justice for all people, is not longer required.

Therefore, by virtue of the authority vested in me by Article V of the Constitution, the Code and the Common Law of Virginia, and subject always to my continuing authority and responsibility to act in such matters, and to reserve powers, I do hereby rescind Executive Order Number Eight (90) issued the 15th day of May, nineteen hundred and ninety.

This Executive Order shall be effective upon its signing, and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 24th day of September, 1993.

/s/ Lawrence Douglas Wilder
Governor

VA.R. Doc. No. R94-49; Filed September 28, 1993, 9:34 a.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

Title of Regulation: VR 240-01-5. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.

Governor's Comment:

Changes to these regulations revise entry-level training requirements for dispatchers to ensure a quality of training that best serves to protect the health, safety and welfare of the citizens of the Commonwealth of Virginia. I recommend approval.

/s/ Lawrence Douglas Wilder
Governor
Date: September 20, 1993

VA.R. Doc. No. R94-23; Filed September 23, 1993, 9:36 a.m.

* * * * *

Title of Regulation: VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security.

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public

hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: September 20, 1993

VA.R. Doc. No. R94-21; Filed September 21, 1993, 9:31 a.m.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: VR 355-40-400. Regulations Governing the Virginia Medical Scholarship Program.

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: September 20, 1993

VA.R. Doc. No. R94-22; Filed September 21, 1993, 9:31 a.m.

GENERAL NOTICES/ERRATA

Symbol Key †
† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

NOTICE

Notices of Intended Regulatory Action are published as a separate section at the beginning of each issue of the Virginia Register.

DEPARTMENT OF EMERGENCY SERVICES

Policy of Nondiscrimination on the Basis of Disability

The Department of Emergency Services does not discriminate on the basis of disability in access to employment or in its programs and activities. The Americans with Disabilities Act and 504 has been designated to coordinate compliance with the nondiscrimination requirements contained in § 35.107 (28 CFR 35.107) of the Department of Justice regulation implementing Title II of the Americans with Disabilities Act. Information concerning the provisions of the Americans with Disabilities Act, and the rights provided thereunder, are available from this agency's Americans with Disabilities Act/504 Coordinator.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Virginia Coastal Resources Management Program

Public Notice of Approved Routine Program Implementations

On August 9, 1993, the Department of Environmental Quality submitted two routine program changes to the Office of Ocean and Coastal Resources Management of NOAA for incorporation into the Virginia Coastal Resources Management Program (VCRMP). As required by the Coastal Zone Management Act, Tidewater localities and affected federal and state agencies were notified on the same date of the proposed incorporation of the Virginia Water Protection Permit and the amendments authorizing the assessment of restoration orders, civil charges and penalties as applied to the Wetlands Act, the Coastal Primary Sand Dune Act and the Subaqueous Lands Act. A public notice describing the submission was simultaneously published in The Virginia Register and the Richmond Times-Dispatch. On September 3, 1993, Virginia received notice that NOAA has accepted these changes to Virginia's coastal program. Federal Consistency applies as of September 10, 1993, when notice of this concurrence was

published in the Richmond Times-Dispatch. Please contact John Marling for further information regarding Federal Consistency, or Jeannie Lewis Smith for the complete RPI package at the Department of Environmental Quality, Division of Intergovernmental Coordination, 902 North 9th Street, Richmond, Virginia 23219, telephone (804) 786-4500.



DEPARTMENT OF HEALTH (STATE BOARD OF)

Virginia Voluntary Formulary Board

Adoption and Issuance of Revisions to the Virginia Voluntary Formulary

Pursuant to the authority vested in the Virginia Voluntary Formulary Board by § 32.1-79 et seq. of the 1950 Code of Virginia, notice is hereby given of a public hearing by the Virginia Voluntary Formulary Board, to be held at 10 a.m. on October 22, 1993, Main Floor Auditorium, James Madison Building, 109 Governor Street, Richmond, Virginia. The said hearing shall consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary.

The Virginia Voluntary Formulary lists drugs of accepted therapeutic value commonly prescribed within the state which are available from more than one source of supply. The formulary also lists manufacturers of drug products which the Virginia Voluntary Formulary Board has found to be acceptable based upon the data submitted by these manufacturers and their respective distributors.

The proposed revision to the Virginia Voluntary Formulary adds and deletes drugs and drug products to the formulary that became effective February 17, 1993, and the most recent supplement to that formulary.

Copies of the proposed revisions to the Virginia Voluntary Formulary are available for inspection at the Bureau of Pharmacy Services, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on October 22, 1993, will be made a part of the hearing record and considered by the board.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Title of Regulation: VR 173-01-00:1. Public Participation Guidelines.

Publication: 9:25 VA.R. 5074-5078 September 6, 1993.

Correction to Emergency Regulation:

Page 5075, column 1, Preamble, paragraph 2, line 8, change "groups of consultation" to "groups or consultation"

Page 5075, column 2, Summary, line 12, change "reconsideration of revision" to "reconsideration or revision"

Page 5076, column 1, § 1, definition of "Person," line 2, after "association" insert ","

Page 5078, column 2, § 4, language was omitted from this section. Insert the following text: "The amending provisions contained in this emergency regulation shall apply only to regulatory actions for which a NOIRA is filed with the Registrar of Regulations at or after the time these guidelines take effect."

CALENDAR OF EVENTS

Symbols Key	
†	Indicates entries since last publication of the Virginia Register
☒	Location accessible to handicapped
☎	Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

October 18, 1993 - 10 a.m. – Open Meeting
October 19, 1993 - 8 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) review applications; (ii) review correspondence; (iii) review and disposition of enforcement cases; and (iv) conduct routine board business.

Contact: Mark N. Courtney, CPE Administrator, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

October 25, 1993 - 10 a.m. – Open Meeting
City Council Chambers, 715 Princess Ann Street,
Fredericksburg, Virginia.

A meeting to conduct a formal administrative hearing in regard to the Board for Accountancy v. Charles E. Coker, CPA.

Contact: Carol A. Mitchell, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

GOVERNOR'S ADVISORY BOARD ON AGING

October 28, 1993 - 8 a.m. – Open Meeting
Sheraton Inn, 36th and Atlantic Avenue, Virginia Beach,

Virginia. ☒ (Interpreter for the deaf provided upon request)

The board will hold a general session to discuss the draft report of the Long-Term Care and Aging Task Force and to plan legislative activities for the upcoming session of the General Assembly.

Contact: Bill Peterson, Planner, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 225-2803 or (804) 225-2271/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Aquaculture Advisory Board

October 26, 1993 - 2 p.m. – Open Meeting
Virginia State University, Foster Hall, Room 114,
Petersburg, Virginia. ☒

The board will meet in regular session to discuss issues related to the Virginia aquaculture industry. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the Virginia Aquaculture Advisory Board identified in this notice at least 5 days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: T. Robins Buck, Secretary, Virginia Aquaculture Advisory Board, Department of Agriculture and Consumer Services, P.O. Box 1163, Suite 1003, Richmond, VA 23209, telephone (804) 371-6094.

Virginia Cattle Industry Board

† **November 4, 1993 - 10 a.m. – Open Meeting**
Virginia Cattlemen's Association Office, Daleville, Virginia. ☒

A meeting to review projects and financial position and to discuss potential projects. Any person who needs any accommodation in order to participate at the meeting should contact Reginald Reynolds, Executive Director, at least five days before the meeting so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Reginald B. Reynolds, Executive Director, P.O. Box 176, Daleville, VA 24083, telephone (703) 992-1009.

Virginia Egg Board

October 19, 1993 - 10 a.m. - Open Meeting
Marriott Hotel, Hershberger Road, Roanoke, Virginia. ☒
(Interpreter for the deaf provided upon request)

The board will discuss the new tax amendment concerning the Virginia Egg Excise Tax Regulations, processed eggs involving Virginia Tech research, two new programs that will be introduced with Henrico County's W.I.C.K. Program and Environmental Program with the City of Winchester. Any person who needs any accommodation in order to participate at the meeting should contact Cecilia Glembocki, Program Director, at least 5 days before the meeting on October 19 so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Cecilia Glembocki, Program Director, 911 Saddleback Court, McLean, VA 22102, telephone (703) 734-8931.

Virginia Seed Potato Board

† November 3, 1993 - 8 p.m. - Open Meeting
Eastern Shore Agriculture Experiment Station, Research Drive, Painter, Virginia. ☒

The board will meet to consider whether its regulations should be amended. Any person who needs any accommodation in order to participate at the meeting should contact William Mapp, Program Director, at least five days before the meeting so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: J. William Mapp, Program Director, Box 26, Onley, VA 23418, telephone (804) 787-5867.

Virginia Winegrowers Advisory Board

† November 8, 1993 - 10 a.m. - Open Meeting
Omni Hotel, Charlottesville, Virginia. ☒

A meeting to hear committee and project monitor reports and review old and new business. Any person who needs any accommodation in order to participate at the meeting should contact Wendy Rizzo at least 14 days before the meeting so that suitable arrangements can be made for any appropriate accommodation.

Contact: Wendy Rizzo, Secretary, 1100 Bank St., Suite 1010, Richmond, VA 23219, telephone (804) 371-7685.

STATE AIR POLLUTION CONTROL BOARD

November 17, 1993 - 10:30 a.m. - Public Hearing
Pohick Regional Public Library, 6450 Sydenstricker Road, Burke, Virginia.

December 3, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14.7.1 of the Code of Virginia and the requirements of § 110(a)(1) of the Federal Clean Air Act that the State Air Pollution Control Board intends to adopt regulations entitled: VR 120-99-03. Regulation for the Control of Motor Vehicle Emissions. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

The 1990 Clean Air Act amendments require that the Northern Virginia vehicle emissions testing program be upgraded from a "basic" program, which tests vehicle exhaust emissions at idle speed, to an "enhanced" program, which tests exhaust emissions from most vehicles during a simulated driving cycle and also tests for excessive fuel evaporation.

The regulation defines affected motor vehicles and requires that they be presented to a test-only emissions inspection station biennially to receive a test based on vehicle model year and weight class. Information regarding the vehicle's performance on the test is given to the motorist and a pass, fail, waiver or rejection signal is electronically stored for the purpose of enforcement through registration. The inspection may cost the motorist up to \$20 and there is an administrative fee of \$2 per vehicle, per year of registration, due at the time of registration. This will, in most cases, be collected by the Department of Motor Vehicles and deposited into a fund for the purpose of funding the state oversight costs of this program.

Cars and trucks weighing less than 8,500 pounds, of model years 1968 and newer, will be subject to the "high-tech" exhaust emissions inspection, called IM240, which tests cars in a simulated driving cycle. All but the 1968-70 model years will also get a test of the vehicle's fuel vapor recovery system and of the fuel supply system to detect evaporative leaks. Heavier trucks will get a test of the exhaust emissions at idle and with the engine running at 2,500 RPM, called a "two-speed idle test." In addition to vehicles registered in the area defined by the law, vehicles not registered but operated regularly in the program area, such as on federal installations, will also be subject to testing, regardless of where they are registered. State and local government vehicles are also included.

The test is valid for two years no matter how many times the vehicle is bought or sold. If a motorist

Calendar of Events

wishes to request a waiver of the test, he must spend at least \$450 on emissions-related repairs. The cost amount is adjusted each January by applying the Consumer Price Index released the previous fall by the federal government. The waiver is also valid for two years.

Random testing of vehicles is required and will be accomplished using either roadside pullovers for an idle test or a remote sensing device next to the roadway.

The regulation defines conditions under which an inspection station may be granted a permit and emissions inspectors may be granted a license. Certain conditions for consumer protection, such as location of stations, parameters for determining the number of inspection stations, and motorist waiting time are included in the regulation.

Comparison with federal requirements: The following provisions of the regulation are more stringent than federal requirements:

1. Coverage is extended from the nonattainment area to include Fauquier County based on the requirement in the state statute.
2. Consumer protection requirements regarding the location of inspection stations, the number of inspection lanes, and the hours of operation provide parameters for these aspects of the program, based on requirements in the state statute, which are not requirements of the federal regulation.
3. Manufacturers or distributors of emissions testing equipment are prohibited from owning or operating emissions inspection stations by statute.
4. The federal requirement for this program is that a calculated reduction in certain emissions, in grams of emissions per vehicle mile traveled, be met through a program based on a model program developed by EPA. Some aspects of a state's program may match the model program, some may be less stringent, and some may be more stringent. Aspects of greater stringency must make up for those aspects which are less stringent.

EPA's model program, i.e. the performance standard, includes:

Network type: Centralized

Start date: January 1, 1995

Test frequency: Annual testing

Model year coverage: 1968 and lower

Vehicle type coverage: Light duty vehicles and light

duty trucks rated up to 8,500 pounds GVWR

Transient, mass-emissions test (IM240): 1986 and newer vehicles

Two-speed test, no resistance load: 1981-1985 vehicles

Idle test: 1980 and older

Virginia's proposed program, designed to meet the performance standard, includes these variations on the model program:

Test frequency: Biennial testing

Vehicle type coverage: Vehicles rated up to 26,000 pounds GVWR, with exceptions for diesels, motorcycles, and antique vehicles

Transient, mass-emissions test (IM240): 1968 and newer light duty vehicles and trucks up to 8,500 pounds GVWR

Two-speed test, no resistance load: 1968 and newer heavy duty vehicles and trucks up to 26,000 pounds GVWR

The following provision of the regulation is less stringent than federal requirements:

Used vehicles held in a motor vehicle dealer's inventory for resale may be registered for one year without an emissions inspection provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's or distributor's warranty at the time of resale. This deferment is based on a requirement in the state statute.

Location of proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the office of the Air Programs Section, 9th Street Office Building, 8th Floor, 200-202 North 9th Street, Richmond, Virginia, and at the office of the Mobile Sources Section, Department of Environmental Quality, 7240-D Telegraph Square Drive, Lorton, Virginia, telephone (703) 339-8553, between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Statutory Authority: §§ 46.2-1179 and 46.2-1180 of the Code of Virginia.

Written comments may be submitted through December 3,

Calendar of Events

1993, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: David Kinsey, Policy Analyst, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1620.

ALCOHOLIC BEVERAGE CONTROL BOARD

October 25, 1993 - 9:30 a.m. - Open Meeting
November 8, 1993 - 9:30 a.m. - Open Meeting
November 22, 1993 - 9:30 a.m. - Open Meeting
2901 Hermitage Road, Richmond, Virginia. ☒

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

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† December 17, 1993 - Written comments may be submitted through this date.

† December 20, 1993 - 10 a.m. - Public Hearing
Department of Alcoholic Beverage Control, 2901 Hermitage Road, 1st Floor Hearing Room, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend regulations entitled: VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations; VR 125-01-2. Advertising; VR 125-01-3. Tied-House; VR 125-01-4. Requirements for Product Approval; VR 125-01-5. Retail Operations; VR 125-01-6. Manufacturers and Wholesalers Operations; and VR 125-01-7. Other Provisions. The proposed amendments to the regulations relate to (i) recodification of Title 4 into new Title 4.1; (ii) informal conferences; (iii) agency representation; (iv) public participation guidelines; (v) allowing manufacturers, bottlers and wholesalers to supply retailers with inflatables and spirits back-bar pedestals; (vi) off-site directional signs for farm wineries and wineries holding retail off-premises winery licenses; (vii) increasing the record retention period from two to three years for licensees and permittees; (viii) prohibiting manufacturers, bottlers and wholesalers from providing customized advertising materials to retail licensees; (ix) wine coolers; (x) when and under what circumstances special agents and other law-enforcement officers shall have access to licensed retail establishments; (xi) the definition of "reasonable hours"; (xii) requiring wine and beer and beer only

restaurants to sell meals or other food at substantially all hours that wine and beer are offered for sale; (xiii) the form, content and retention of records and accounts required to be kept by licensees; (xiv) waiver of the banquet license tax for not-for-profit corporations or associations holding nonprofit events; and (xv) grain alcohol permits.

Statutory Authority: §§ 4.1-103, 4.1-111, 4.1-113, 4.1-204, 4.1-320, 4.1-329, 9-6.14:7.1 and 9-6.14:11 of the Code of Virginia.

Contact: Robert N. Swinson, Secretary to the Board, P.O. Box 27491, Richmond, VA 23261-7491, telephone (804) 367-0616.

VIRGINIA ASBESTOS LICENSING BOARD

† December 20, 1993 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Asbestos Licensing Board intends to adopt regulations entitled: VR 137-01-1. Public Participation Guidelines. The proposed guidelines will set procedures for the Virginia Asbestos Licensing Board to follow to inform and incorporate public participation when promulgating asbestos licensing regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-501 of the Code of Virginia.

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8588.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

November 4, 1993 - 9:30 a.m. - Open Meeting
6606 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9907.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† October 21, 1993 - 10 a.m. - Open Meeting
State Capitol, Senate Room 4, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. A tentative agenda is available from the

Calendar of Events

Chesapeake Bay Local Assistance Department.

† **December 2, 1993 - 10 a.m.** – Open Meeting
State Capitol, Senate Room 4, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. A tentative agenda will be available by November 23 from the Chesapeake Bay Local Assistance Department.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Central Area Review Committee

† **October 27, 1993 - 10 a.m.** – Open Meeting
† **November 17, 1993 - 10 a.m.** – Open Meeting
† **December 15, 1993 - 10 a.m.** – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the Central Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

† **November 16, 1993 - 2 p.m.** – Open Meeting
† **December 14, 1993 - 2 p.m.** – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

† **October 20, 1993 - 2 p.m.** – Open Meeting
† **November 17, 1993 - 2 p.m.** – Open Meeting
† **December 15, 1993 - 2 p.m.** – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Goose Creek Scenic River Advisory Board

† **October 27, 1993 - 2 p.m.** – Open Meeting
George Washington University, Route 7, Loudoun County, Virginia.

A review of river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

BOARD OF CORRECTIONS

October 20, 1993 - 10 a.m. – Open Meeting
6900 Atmore Drive, Board Room, Richmond, Virginia. ☒

A regular monthly meeting to consider such matters as may be presented to the board.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

Private Security Services Advisory Board

October 29, 1993 - 9 a.m. – Open Meeting
Virginia Beach Hilton, 5th and Oceanfront, Virginia Beach, Virginia. ☒

A meeting to discuss business of the advisory board.

Contact: Martha M. Clancy, Criminal Justice Analyst, 805 E. Broad St., 9th Floor, Private Security Section, Richmond, VA 23219, telephone (804) 786-4700.

DISABILITY SERVICES COUNCIL

† October 22, 1993 - 2 p.m. - Open Meeting Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss and develop guidelines for the Rehabilitative Services Incentive Fund.

Contact: Linda Lohrman, Coordinator, Office of Special Projects, Department of Rehabilitative Services, 4901 Fitzhugh Ave., Richmond, VA 23219, telephone (804) 367-0282, toll-free 1-800-552-5019 or (804) 367-0282/TDD

BOARD OF EDUCATION

October 28, 1993 - 8:30 a.m. - Open Meeting November 17, 1993 - 8:30 a.m. - Open Meeting November 18, 1993 - 8:30 a.m. - Open Meeting James Monroe Building, 101 North 14th Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Dr. Ernest W. Martin, Assistant Superintendent, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2073 or toll-free 1-800-292-3820.

December 3, 1993 - 4 p.m. - Public Hearing James Monroe Building, 101 North 14th Street, Richmond, Virginia.

December 3, 1993 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: VR 270-01-0034. Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits. The proposed revisions increase user fees to the schools and update and provide consistency between the regulations and current practice. For more information or to receive a copy of the proposals contact Carol Buchanan at the address below.

Statutory Authority: §§ 22.1-321 and 22.1-327 of the Code of Virginia.

Contact: Carol Buchanan, Associate Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2848 or toll-free 1-800-292-3820.

BOARDS OF EDUCATION; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; SOCIAL SERVICES; AND YOUTH AND FAMILY SERVICES

† December 17, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth and Family Services intend to amend regulations entitled: VR 270-01-003, VR 470-02-01, VR 615-29-02, and VR 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children. This regulation is designed to assure that adequate care, treatment and education are provided by residential facilities for children. The proposed revisions amend and clarify requirements governing participation of residents in human research and duration of licenses/certificates.

Statutory Authority: §§ 16.1-311, 22.1-321, 22.1-323.2, 37.1-10, 37.1-182, 37.1-189.1, 63.1-25, 63.1-196.4, 66-10 and 66-24 of the Code of Virginia.

Written comments may be submitted through December 17, 1993, to Rhonda M. Harrell, Office of Interdepartmental Regulation, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: John J. Allen, Jr., Coordinator, Office of Interdepartmental Regulation, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1960.

STATE EDUCATION ASSISTANCE AUTHORITY

† December 17, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Education Assistance Authority intends to amend regulations entitled: VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs. The purpose of the proposed amendment is to incorporate changes to federal statute and regulations, to reduce lender due diligence requirements and to respond to changes in federal interest payments for claims.

Calendar of Events

Statutory Authority: § 23-38.33:1 C 7 of the Code of Virginia.

Written comments may be submitted through December 17, 1993, to Marvin Ragland, Virginia Student Assistance Authorities, 411 Franklin Street, Richmond, Virginia 23219.

Contact: Sherry Scott, Policy Analyst, 411 E. Franklin St., Richmond, VA 23219, telephone (804) 775-4000 or toll-free 1-800-792-5626.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

November 4, 1993 - 5:30 p.m. - Open Meeting

December 2, 1993 - 5:30 p.m. - Open Meeting

Chesterfield County Administration Building, 10001 Ironbridge Road, Room 502, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

October 27, 1993 - 6:30 p.m. - Open Meeting

Gloucester Administration Building Conference Room, Gloucester, Virginia. ☒ (Interpreter for the deaf provided upon request)

A quarterly meeting. Matters on the agenda to be addressed will be (i) distribution of the updated plan; and (ii) the annual exercise and appointment of a nominating committee to present a slate of officers at the next quarterly meeting.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042.

LOCAL EMERGENCY PLANNING COMMITTEE - PRINCE WILLIAM COUNTY, MANASSAS CITY, AND MANASSAS PARK CITY

† November 15, 1993 - 1:30 p.m. - Open Meeting
One County Complex Court, Potomac Conference Room, Prince William, Virginia. ☒

A multi-jurisdictional local emergency planning committee to discuss issues related to hazardous substances in the jurisdictions. SARA Title III provisions and responsibilities for hazardous material emergency response planning.

Contact: John E. Medici, Hazardous Materials Officer, One County Complex Court, Internal Zip MC470, Prince William, VA 22192, telephone (703) 792-6800.

VIRGINIA EMPLOYMENT COMMISSION

State Advisory Board

† November 3, 1993 - 1:30 p.m. - Open Meeting
Fredericksburg Sheraton, Route 3, Fredericksburg, Virginia.
☒ (Interpreter for the deaf provided upon request)

A regular meeting of the State Advisory Board to conduct general business.

Contact: Nancy L. Munnikhuysen, Chief Marketing and Public Affairs, 703 E. Main Street, Richmond, VA 23219, telephone (804) 786-3001 or (804) 371-8050/TDD ☎

STATE BOARD OF ELECTIONS

† November 22, 1993 - 10 a.m. - Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Square, Richmond, Virginia. ☒

A meeting to certify the results of the November 2, 1993, general election.

Contact: Margaret O. "Jane" Jones, Executive Secretary Senior, State Board of Elections, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 692-3014 or toll-free 1-800-552-9745.

VIRGINIA FIRE SERVICES BOARD

October 21, 1993 - 7:30 p.m. - Public Hearing
Ramada Inn, 1130 Motel Drive, Woodstock, Virginia.

A public hearing business meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

October 22, 1993 - 9 a.m. - Open Meeting
Ramada Inn, 1130 Motel Drive, Woodstock, Virginia.

A business meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training

October 21, 1993 - 10 a.m. - Open Meeting
Ramada Inn, 1130 Motel Drive, Woodstock, Virginia.

Calendar of Events

A committee meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

October 21, 1993 - 9 a.m. – Open Meeting
Ramada Inn, 1130 Motel Drive, Woodstock, Virginia.

A committee meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

October 21, 1993 - 1 p.m. – Open Meeting
Ramada Inn, 1130 Motel Drive, Woodstock, Virginia.

A committee meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

October 19, 1993 - 9:30 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A general business meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

Examination Committee

October 19, 1993 - 8:45 a.m. – Open Meeting
6606 W. Broad St., 5th Floor, Richmond, Virginia. ☒

A planning session.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

Executive Committee

October 18, 1993 - 4 p.m. – Open Meeting
6606 W. Broad St., 5th Floor, Richmond, Virginia. ☒

A planning session.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

Inspection/Compliance Committee

October 19, 1993 - 8 a.m. – Open Meeting
6606 W. Broad St., 5th Floor, Richmond, Virginia. ☒

A planning session.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

Legislative Committee

October 18, 1993 - 5 p.m. – Open Meeting
6606 W. Broad St., 5th Floor, Richmond, Virginia. ☒

A planning session.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

BOARD FOR GEOLOGY

November 19, 1993 - 10 a.m. – Open Meeting
3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☒

A general board meeting.

† **November 19, 1993 - 10 a.m. – Open Meeting**
3600 West Broad Street, Conference Room 2, Richmond, Virginia. ☒

Grading of October examination.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

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† **December 20, 1993 – Written comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Geology intends to repeal regulations entitled: VR 355-01-1, **Public Participation Guidelines** and adopt regulations entitled VR 355-01-1:1, **Public Participation Guidelines**. The proposed guidelines will set procedures for the Board for Geology to follow to inform and incorporate public participation when

Calendar of Events

promulgating geology regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1402 of the Code of Virginia.

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

BOARD OF HEALTH PROFESSIONS

October 18, 1993 - 9 a.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

December 4, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health Professions intends to adopt regulations entitled: **VR 365-01-2. Regulations Governing Practitioner Self-Referral.** The purpose of the proposed regulations is to implement the Practitioner Self-Referral Act enacted by the 1993 General Assembly.

Statutory Authority: § 54.1-2510 of the Code of Virginia.

Contact: Richard D. Morrison, Ph.D., Deputy Director for Research, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

October 19, 1993 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, 5th Floor, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A quarterly board meeting, including consideration of recommendations from the Regulatory Research Committee on legislative studies. A public comment period will be at noon.

Contact: Richard D. Morrison, Ph.D., Deputy Director for Research, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

Regulatory Research Committee

October 18, 1993 - 1 p.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, 5th Floor, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to consider findings and recommendations to the regulation of tattooists and tattoo parlors, marriage and family therapists, private vocational rehabilitation providers, and treatment providers for sexual assault offenders.

Contact: Richard D. Morrison, Ph.D., Deputy Director for

Research, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

October 26, 1993 - 9:30 a.m. – Open Meeting
Blue Cross Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting. All council task forces will meet at 8:30 a.m. prior to the full council meeting.

November 23, 1993 - 9:30 a.m. – Open Meeting
Blue Cross Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

HEMOPHILIA ADVISORY COMMITTEE

† **November 19, 1993 - 10 a.m. – Open Meeting**
James Monroe Building, 101 North 14th Street, Mezzanine Conference Room, Room 3, Richmond, Virginia.

The Advisory Board consults with the Board of Health regarding programs serving persons suffering from hemophilia and other related bleeding diseases. The board meets annually to discuss (i) budget status; (ii) developments and future trends in blood products; (iii) update on impact of patient insurance program; (iv) planning for future developments in the Hemophilia Program; and (v) plan for treatment and management of hemophilia patients who are HIV positive or suffering from Acute Immune Deficiency Syndrome.

Contact: Pamela G. Piaster, R.N., Hemophilia Nurse Coordinator, Division of Children's Specialty Services, Box 461, MCV Station, Richmond, VA 23298-0461, telephone (804) 786-3306.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **November 17, 1993 - 9 a.m. – Open Meeting**
† **December 14, 1993 - 9 a.m. – Open Meeting**
† **January 11, 1994 - 9 a.m. – Open Meeting**
James Monroe Building, 101 North 14th Street, SCHEV Conference Room, 9th Floor, Richmond, Virginia. ☒

A general business meeting. For more information, contact the council.

Contact: Anne Pratt, Associate Director, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219,

telephone (804) 225-2632.

DEPARTMENT OF HISTORIC RESOURCES

November 10, 1993 - 7:30 p.m. - Public Hearing
City Hall, 900 East Broad Street, Richmond, Virginia.

November 16, 1993 - 7:30 p.m. - Public Hearing
Lyceum, 201 South Washington Street, Alexandria, Virginia.

November 17, 1993 - 7:30 p.m. - Public Hearing
Roanoke City Municipal Building, 215 Church Avenue, S.W.,
Roanoke, Virginia.

December 6, 1993 - Written comments may be submitted
until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Historic Resources intends to adopt regulations entitled: **VR 392-01-02. Evaluation Criteria and Procedures for Nomination of Property to the National Register of Historic Places or for Designation as a National Historic Landmark.** The proposed regulation establishes the evaluation criteria by which the director shall determine whether property should be nominated to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark. Pursuant to the requirements of § 10.1-2202 of the Code of Virginia, the criteria are consistent with the criteria set forth in 36 CFR, Part 60, the federal regulations that implement the National Historic Preservation Act, as amended (P.L. 89-665). In addition, the proposed regulation sets out procedures for written notification to property owners and local governments, along with a requirement for public hearings in certain cases, prior to the nomination of property by the director to the National Park Service. Finally, the proposed regulation sets out the procedure by which affected property owners can object to the proposed inclusion of their property in the National Register or to the proposed designation of their property as a National Historic Landmark. The proposed procedures are consistent with the requirements of §§ 10.1-2206.1 and 10.1-2206.2 of the Code of Virginia.

Statutory Authority: § 10.1-2202 of the Code of Virginia.

Contact: Margaret T. Peters, Information Officer,
Department of Historic Resources, 221 Governor St.,
Richmond, VA 23219, telephone (804) 786-3143.

Board of Historic Resources

October 20, 1993 - 10 a.m. - Open Meeting
General Assembly Building, 910 Capitol Square, Senate
Room A, Richmond, Virginia. ☒ (Interpreter for the deaf
provided upon request)

A general business meeting to consider the following
properties for listing on the Virginia Landmarks
Register:

- Azures, Chesterfield County
- Burlington, Orange County
- Fairview, Spotsylvania County
- Fredericksburg Town Hall and Market Square,
Fredericksburg
- La Vue, Spotsylvania County
- Loretta, Fauquier County
- River House, Clarke County
- St. John's Episcopal Church, King George County
- Thomas Jefferson High School, Richmond (city)

Contact: Margaret T. Peters, Information Officer,
Department of Historic Resources, 221 Governor St.,
Richmond, VA 23219, telephone (804) 786-3143 or (804)
786-1934/TDD ☎

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November 10, 1993 - 7:30 p.m. - Public Hearing
City Hall, 900 East Broad Street, Richmond, Virginia.

November 16, 1993 - 7:30 p.m. - Public Hearing
Lyceum, 201 South Washington Street, Alexandria, Virginia.

November 17, 1993 - 7:30 p.m. - Public Hearing
Roanoke City Municipal Building, 215 Church Avenue, S.W.,
Roanoke, Virginia.

December 6, 1993 - Written comments may be submitted
until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Historic Resources intends to adopt regulations entitled: **VR 390-01-03. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.** The proposed regulation establishes the evaluation criteria by which the board shall determine whether property should be designated for inclusion in the Virginia Landmarks Register. Pursuant to the requirements of § 10.1-2205 of the Code of Virginia, the criteria are consistent with the criteria set forth in 36 CFR, Part 60, the federal regulations that implement the National Historic Preservation Act, as amended (P.L. 89-665). In addition, the proposed regulation sets out procedures for written notification of property owners and local governments, along with a requirement for public hearings in certain cases, prior to a designation by the board. Finally, the proposed regulation sets out the procedure by which affected property owners can object to a proposed designation and prevent the board from making the designation. The proposed procedures are consistent with the requirements of §§ 10.1-2206.1 and 10.1-2206.2 of the Code of Virginia.

Statutory Authority: § 10.1-2205 of the Code of Virginia.

Calendar of Events

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

State Review Board

October 19, 1993 - 10 a.m. - Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to consider the nomination of the following properties to the National Register of Historic Places:

Azurest, Chesterfield County
Burlington, Orange County
Fairview, Spotsylvania County
Fredericksburg Town Hall and Market Square, Fredericksburg
La Vue, Spotsylvania County
Loretta, Fauquier County
River House, Clarke County
St. John's Episcopal Church, King George County
Thomas Jefferson High School, Richmond (city)

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

November 2, 1993 - 9 a.m. - Open Meeting
December 7, 1993 - 9 a.m. - Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for the deaf provided upon request)

A Local Emergency Preparedness committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

November 8, 1993 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to adopt regulations entitled: **VR 394-01-1. Public Participation Guidelines.** The purpose of the proposed action is to amend existing regulations to conform with new legislation.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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November 8, 1993 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-2. Certification Standards for Building Inspection Personnel, Amusement Device Inspectors, Blasters, Plumbers, Electricians, and Building Related Mechanical Workers/1990.** The purpose of the proposed action is to amend existing regulations to establish certification standards for certain local building and fire inspectors.

Statutory Authority: §§ 15.1-11.4, 36-98.3, 36-137 and 27-97 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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November 8, 1993 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-4. Amusement Device Regulations/1990.** The purpose of the proposed action is to amend existing regulations to add standards for gravity rides.

Statutory Authority: §§ 36-98 and 36-98.3 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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November 8, 1993 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-6. Virginia Statewide Fire Prevention Code/1990.** The purpose of the proposed action is to update to 1993 National Model Fire Prevention Code.

Calendar of Events

Statutory Authority: § 27-97 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code - Volume I - New Construction Code/1990**. The purpose of the proposed action is to amend existing regulation to update to 1993 National Model Building Code.

Statutory Authority: § 36-98 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-22. Virginia Uniform Statewide Building Code - Volume II - Building Maintenance Code/1990**. The purpose of the proposed action is to amend existing regulation to update to 1993 National Model Building Code.

Statutory Authority: §§ 36-98 and 36-103 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-31. Virginia Industrialized Building and Manufactured Home Safety Regulations/1990**. The purpose of the proposed action is to amend existing regulation to update to 1993 National Model Building Code.

Statutory Authority: §§ 36-73 and 36-85.7 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-200. Virginia Private Activity Bond Regulations**. The purpose of the proposed amendments is to change year-end carryforward allocation priorities.

Statutory Authority: § 15.1-1399.15 of the Code of Virginia.

Contact: Charles Gravatt, Financial Assistance Coordinator, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7025.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

October 20, 1993 - 1 p.m. – Open Meeting
601 South Belvidere Street, Richmond, Virginia. ☐

A meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as they may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

October 18, 1993 - 1 p.m. – Open Meeting
Marriott Hotel, Richmond, Virginia.

The regular meeting of the advisory commission will be held in conjunction with the annual conference of the Virginia Municipal League. Persons desiring to participate in the meeting and requiring special

Calendar of Events

accommodations or interpreter services should contact the commission's office at (804) 786-6508 or (804) 786-1860 TDD by October 8, 1993.

November 8, 1993 - 1 p.m. – Open Meeting
The Homestead, Hot Springs, Virginia.

The regular meeting of the advisory commission will be held in conjunction with the annual conference of the Virginia Association of Counties. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission's office at (804) 786-6508 or (804) 786-1860 TDD by October 29, 1993.

Contact: Robert H. Kirby, Secretary, 702 8th Street Office Bldg., Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

† **November 2, 1993 - 10 a.m. – Open Meeting**
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A regular meeting of the council. The tentative agenda is (i) review of public participation guidelines; (ii) report of the related instruction task force; (iii) report of the sponsor survey; and (iv) response to the Board of Housing and Community on proposed journeyman status.

Contact: Robert S. Baumgardner, Director, Apprenticeship Division, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2381.

STATE COUNCIL ON LOCAL DEBT

October 20, 1993 - 11 a.m. – Open Meeting
November 17, 1993 - 11 a.m. – Open Meeting
December 15, 1993 - 11 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☒

A regular meeting, subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4928.

COMMISSION ON LOCAL GOVERNMENT

November 4, 1993 - 9 a.m. – Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level, Meeting Room 3, Richmond, Virginia.

Oral presentations - Town of Colonial Beach - Westmoreland County. Arbitration of school funding issue at request of localities.

Persons desiring to participate in the Commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices by October 21, 1993.

November 5, 1993 - 9 a.m. – Open Meeting
Richmond area (site to be determined).

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the commission's meeting and requiring special accommodations or interpreter services should contact the commission's offices.

Contact: Barbara Bingham, Administrative Assistant, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

LONGWOOD COLLEGE

Executive Committee

December 2, 1993 - 5 p.m. – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☒

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

Board of Visitors

October 29, 1993 - 10 a.m. – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☒

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

MANUFACTURED HOUSING BOARD

November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Manufactured Housing Board intends to amend regulations entitled: VR

449-01-01. Public Participation Guidelines. The purpose of the proposed amendments is to comply with statutory changes by establishing procedures for soliciting input of interested parties in the formation and development of regulations.

Statutory Authority: §§ 9-6.14:7.1 and 36-85.18 of the Code of Virginia.

Contact: Curtis L. McIver, Associate Director, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Manufactured Housing Board intends to adopt regulations entitled: **VR 449-01-02. Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed amendments is to provide increased consumer protection for buyers and users of manufactured homes through mandatory licensing and regulation of manufactured home manufacturers, dealers, brokers and salespeople, statutorily mandated warranties, and a Transaction Recovery Fund. The regulation will be used in the administration and enforcement of the Manufactured Housing Licensing Law and Recovery Fund.

Statutory Authority: §§ 36-85.18 and 36-85.36 of the Code of Virginia.

Contact: Curtis L. McIver, Associate Director, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

MARINE RESOURCES COMMISSION

October 26, 1993 - 9:30 a.m. – Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☒ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues.

The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on

resource matters, regulatory issues and items scheduled for public hearing.

The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646, or (804) 247-2292/TDD ☎

MATERNAL AND CHILD HEALTH COUNCIL

Subcommittee on Teen Pregnancy Prevention

October 28, 1993 - 10 a.m. – Open Meeting
The Belmont Recreation Center, 1600 Hilliard Road, Richmond, Virginia. ☒

A regularly scheduled quarterly business meeting.

Contact: Jeanne McCann, Coordinator, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Prevention and Children's Resources, 109 Governor St., 10th Floor, Richmond, VA 23219, telephone (804) 786-1530.

BOARD OF MEDICAL ASSISTANCE SERVICES

† **November 9, 1993 - 1 p.m.** – Open Meeting
600 East Broad Street, Board Room, Suite 1300, Richmond, Virginia. ☒

A meeting to discuss medical assistance services and issues pertinent to the board. The board's two subcommittees will meet at 11 a.m., prior to the full board meeting, to further develop and discuss workplans for the subcommittees.

Contact: Pat Sykes, Policy Analyst, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958.

BOARD OF MEDICINE

October 27, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The proposed amendments address misleading or deceptive advertising, pharmacotherapy for weight loss, examinations for licensure in medicine and osteopathy, licensure for endorsement, examination fee, and delete

Calendar of Events

a statement lacking statutory authority.

Statutory Authority: §§ 54.1-100 through 54.1-114, 54.1-2400, 54.1-2914 of the Code of Virginia.

Written comments may be submitted until October 27, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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October 25, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-03-01. Regulations Governing the Practice of Physical Therapy.** The proposed amendments address traineeship and examination after inactive practice when seeking physical therapist and physical therapist assistant licensure. In addition, a process fee is established for withdrawal of applications.

Statutory Authority: §§ 54.1-2400, 54.1-2943 and 54.1-2946 of the Code of Virginia.

Written comments may be submitted until October 25, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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October 25, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-05-1. Regulations Governing the Practice of Physicians' Assistants.** The purpose of the proposed amendments is to establish requirements granting prescriptive authority to physicians' assistants to prescribe and administer Schedule VI controlled substances and devices, and establish a clear and concise definition of the academic study required for prescriptive authority.

Statutory Authority: §§ 54.1-2400 and 54.1-2952.1 of the Code of Virginia.

Written comments may be submitted until October 25, 1993, to Hilary H. Connor, M.D., Executive Director, 6606

West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

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October 25, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-08-1. Regulations for the Certification of Occupational Therapists.** The proposed amendments address English proficiency by foreign-trained occupational therapists and examination criteria for certification.

Statutory Authority: §§ 54.1-2400, 54.1-2956.1 and 54.1-2956.4 of the Code of Virginia.

Written comments may be submitted until October 25, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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October 22, 1993 - 10 a.m. – Public Hearing
6606 West Broad Street, 5th Floor, Board Room 2,
Richmond, Virginia.

November 24, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to adopt regulations entitled: **VR 465-11-1. Licensed Acupuncturists.** The proposed initial regulations address the reenactment of the statutes pertaining to licensed acupuncturists and include: general provisions for acupuncturists, requirements for licensure, scope of practice, renewal and reinstatement of licensure, and fees. The regulations are promulgated through the Acupuncture Advisory Committee and the Board of Medicine. The public hearing is being held at a location that is accessible to the disabled.

Statutory Authority: §§ 54.1-100 through 54.1-114, 54.1-2400, and 54.1-2956.9 through 54.1-2956.11 of the Code of Virginia.

Written comments may be submitted until November 24, 1993, to Hilary H. Connor, M.D., Executive Director, 6606

Calendar of Events

West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

Advisory Committee on Acupuncturists

† December 1, 1993 - 10 a.m. - Open Meeting
6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☒

A meeting to (i) review and respond to public comments to the proposed regulations for the practice of acupuncturist; (ii) review and approve the application for licensure; and (iii) make recommendations to the full board to adopt the regulations for final promulgation. The chairman will entertain public comments for 15 minutes following the adoption of the agenda.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Informal Conference Committee

† November 5, 1993 - 9 a.m. - Open Meeting
Fort Magruder Inn, Route 60 East, Williamsburg, Virginia. ☒

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Discipline, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

Advisory Board on Occupational Therapy

NOTE: CHANGE IN MEETING DATE AND TIME.

November 1, 1993 - 10 a.m. - Open Meeting
6606 West Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to (i) review regulations relating to foreign educated therapists to consider additional requirement or alternatives to ensure minimal competency to practice occupational therapy with safety to the public; and (ii) to review public comments on proposed regulations and other issues which may come before the board. The chairperson will entertain public comments during the first 15 minutes of the meeting.

Contact: Eugenia Dorson, Deputy Executive Director, 6606

W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Physical Therapy

November 4, 1993 - 9 a.m. - Open Meeting
6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ☒

A meeting to receive specific reports from officers and staff; review and evaluate traineeship evaluation forms; review requirements for facilities to employ foreign educated trainees and related forms; clarify decision to allow foreign educated therapist to sit for the examination during the traineeship; clarify, by regulation, the period for license requirements in another state to be eligible for waiver of the required traineeship for foreign applicants; review § 6.1 of the regulations; review passing score for licensure examination and the use of storage of schedule VI drugs; and conduct such other business which may come before the advisory board. The advisory board will also review the public comments on proposed regulations and make recommendations to the Board of Medicine. The chairperson will entertain public comments during the first 15 minutes on any agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Committee on Physician Assistants

† November 5, 1993 - 10 a.m. - Open Meeting
6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☒

A meeting to (i) review written and public comments received by the board during the 60-day public comment period; (ii) respond to the comments and make recommendations to the full board; and (iii) conduct such other business that may come before the committee. Public comments will be received 15 minutes prior to the committee's review of the public comments.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† November 9, 1993 - 10 a.m. - Public Hearing
James Monroe Building, 101 North 14th Street, Conference Room B, Richmond, Virginia.

A hearing to obtain public comment on the Community Mental Health Services Block Grant

Calendar of Events

application for FFY 1994 and State Mental Health Plan.

Contact: Janet Lung, Director, Planning and Resource Development, James Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 371-0359.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

October 23, 1993 - 8:30 a.m. - Open Meeting
Virginia Military Institute, Smith Hall, Board Room, Lexington, Virginia. ☒

A regular meeting. Committee reports will be received.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

October 23, 1993 - 9 a.m. - Open Meeting
Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, Virginia. ☒

A meeting to include reports from the executive, finance, marketing, outreach, personnel, planning/facilities, and research and collections committees. Public comment will be received following approval of the minutes of the August meeting.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (703) 666-8616 or (703) 666-8638/TDD ☎

BOARD OF NURSING

October 18, 1993 - 10 a.m. - Open Meeting
County Administrator's Office, 315 School Street, Tazewell, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to conduct a formal hearing with licensee. Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

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November 5, 1993 - Written comments may be submitted

until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **VR 495-01-1. Board of Nursing Regulations.** The proposed amendments will adjust fees as required to cover expenditures, simplify and clarify regulations and to proposed requirements for the approval of medication administration program.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9909.

Special Conference Committee

October 18, 1993 - 8:30 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences with licensees to determine what, if any, action should be recommended to the Board of Nursing. Public comment will not be received.

October 20, 1993 - 8:30 a.m. - Open Meeting
Eastern Shore Community College, 29300 Lankford Highway, Conference Room, Melfa, Virginia. (Interpreter for the deaf provided upon request)

October 20, 1993 - Noon - Open Meeting
Virginia Employment Commission, 5145 East Virginia Beach Boulevard, Employer Room, Norfolk, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct an informal conference with certified nurse aides to determine if any action should be recommended to the Board of Nursing. Public comment will not be received.

Contact: Corinne F. Dorsey, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

December 1, 1993 - 9:30 a.m. - Open Meeting
6606 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9907.

BOARD OF OPTOMETRY

October 20, 1993 - 8 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Room 3, Richmond, Virginia. (Interpreter for
the deaf provided upon request)

Informal conference committee meetings. Public
comment will not be received.

October 20, 1993 - 8 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Room 3, Richmond, Virginia. (Interpreter for
the deaf provided upon request)

A formal hearing. Public comment will not be
received.

October 20, 1993 - 10 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Room 3, Richmond, Virginia. (Interpreter for
the deaf provided upon request)

A general board meeting. A brief public comment will
be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, 6606 W.
Broad St., Richmond, VA 23230-1717, telephone (804)
662-9910.

DEPARTMENT OF PERSONNEL AND TRAINING

† December 17, 1993 - Written comments may be
submitted until 3 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the Department of
Personnel and Training intends to adopt regulations
entitled: VR 525-01-1. Public Participation Guidelines.
The purpose of the proposed regulation is to establish
guidelines for public participation in regulation
development and promulgation.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Contact: Gina Irby, Regulatory Coordinator, Department of
Personnel and Training, Office of Health Benefits, 101 N.
14th St., Richmond, VA 23219, telephone (804) 371-6212.

DEPARTMENT OF STATE POLICE

November 19, 1993 - Written comments may be submitted
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the Department of State
Police intends to amend regulations entitled: VR
545-00-01. Regulations Relating to Public
Participation Policy. This amendment to the agency's

public participation guidelines identifies specific public
participation procedures consistent with recent changes
to the Administrative Process Act. The policy will now
provide for use of ad hoc advisory groups, standing
advisory committees or consultation with groups and
individuals registering interest in assisting with
drafting or formation of regulation under given
circumstances.

Statutory Authority: §§ 9-6.14:7.1, 18.2-295, 18.2-308.2:2,
46.2-1165, 52-8.4, 52-25.1, and 54.1-4009 of the Code of
Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O.
Box 85607, Richmond, VA 23285-5607, telephone (804)
674-2017.

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November 19, 1993 - Written comments may be submitted
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the Department of State
Police intends to amend regulations entitled: VR
545-01-07. Motor Vehicle Safety Inspection Rules and
Regulations. These proposed changes to the
regulations are made to be consistent with recent
changes in state law, federal regulations, nationally
accepted standards and automotive practices. Minor
technical and administrative changes are included.

Statutory Authority: §§ 46.2-909, 46.2-1002, 46.2-1018,
46.2-1022, 46.2-1023, 46.2-1024, 46.2-1025, 46.2-1052, 46.2-1053,
46.2-1056, 46.2-1058, 46.2-1063, 46.2-1065, 46.2-1070,
46.2-1090.1, 46.2-1093, 46.2-1163, 46.2-1164, 46.2-1165, and
46.2-1171 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O.
Box 85607, Richmond, VA 23285-5607, telephone (804)
674-2017.

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November 4, 1993 - 2 p.m. - Public Hearing
State Police Academy, 7700 Midlothian Turnpike,
Richmond, Virginia.

December 3, 1993 - Written comments may be submitted
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the Department of State
Police intends to adopt regulations entitled: VR
545-01-11. Regulations Governing Purchases of
Handguns in Excess of One Within a 30-Day Period.
The purpose of the proposed action is to adopt
permanent regulations to carry out the provisions of
Chapter 486 of the 1993 Acts of Assembly, which
amended § 18.2-308.2 of the Code of Virginia
governing the purchase of handguns in excess of one

Calendar of Events

within a 30-day period.

Statutory Authority: § 18.2-308.2:2 of the Code of Virginia.

Contact: Lieutenant R. Lewis Vass, Assistant Records Management Officer, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

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November 4, 1993 - 2 p.m. – Public Hearing
State Police Academy, 7700 Midlothian Turnpike,
Richmond, Virginia.

December 3, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-12. Regulations Governing the Creation of a Criminal Firearms Clearinghouse.** The proposed regulations establish, within the Department of State Police, a Criminal Firearms Clearinghouse as a central repository of information on all firearms seized, forfeited, found, or otherwise coming into the hands of any state and local law-enforcement agency.

Statutory Authority: § 52-25.1 of the Code of Virginia.

Contact: Lieutenant R. Lewis Vass, Assistant Records Management Officer, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-13. Regulations Relating to Standards and Specifications for regrooved or regroovable tires.** This regulation establishes specifications which define standards for regroovable or regrooved tires.

Statutory Authority: § 46.2-1042 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR**

545-01-14. Regulations Relating to Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles. This regulation establishes standards and specifications for the warning stickers or decals required to be placed on all-terrain vehicles sold by retailers in the Commonwealth.

Statutory Authority: §§ 46.2-915.1 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-15. Regulations Relating to Standards and Specifications for Back-Up Audible Alarm Signals.** This regulation establishes specifications for the back-up audible alarm signals required on garbage and refuse collection and disposal vehicles and certain vehicles used primarily for highway repair and maintenance.

Statutory Authority: § 46.2-1175.1 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-16. Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.** This regulation establishes standards and specifications for warning lights used in the escorting or towing of overdimensional materials, equipment, boats or manufactured housing units by authority of a highway permit issued pursuant to § 46.2-1139 of the Code of Virginia.

Statutory Authority: § 46.2-1026 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

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November 19, 1993 – Written comments may be submitted

through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-17. Regulations Relating to Standards and Specifications for the Safety Lights for Farm Tractors in Excess of 108 Inches in Width.** This regulation establishes specifications for safety lights used on farm tractors and multi-purpose drying units in excess of 108 inches in width which are hauled, propelled, transported or moved on the highway.

Statutory Authority: § 46.2-1102 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

POLYGRAPH EXAMINERS ADVISORY BOARD

December 7, 1993 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☐

A meeting to administer the Polygraph Examiners Licensing Examination to eligible polygraph examiner interns and to consider other matters which may require board action.

Contact: Gerald W. Morgan, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

PREVENTION AND PROMOTION ADVISORY COUNCIL

October 21, 1993 - 9 a.m. – Open Meeting
Dorey Park Recreation Center, 7200 Dorey Park Drive,
Richmond, Virginia. ☐

Council retreat and business meeting.

Contact: Harriett Russell, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Prevention and Children's Resources, Madison Bldg., 109 Governor St., 10th Floor, Richmond, VA 23219, telephone (804) 786-1530.

BOARD OF PROFESSIONAL COUNSELORS

October 28, 1993 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street,
Richmond, Virginia. ☐

A meeting of the informal conference committee. Public comment will not be heard.

Contact: Evelyn B. Brown, Director, or Bernice Parker, Administrative Assistant, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7328.

Task Force on Substance Abuse Certification

October 18, 1993 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street,
Richmond, Virginia. ☐

A meeting to promulgate regulations governing the practice of certification for substance abuse counselors.

Contact: Evelyn B. Brown, Director, or Bernice Parker, Administrative Assistant, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7328.

BOARD OF PROFESSIONAL AND OCCUPATIONAL REGULATION

October 18, 1993 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☐

A regular quarterly meeting. Agenda items are likely to include approval of final reports of legislative studies, continuing professional education, strategic planning and legislation.

Contact: Joyce K. Brown, Secretary to the Board, 3600 W. Broad St., Richmond, VA 23220-4917, telephone (804) 367-8564 or (804) 367-9753/TDD ☎

PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS (PAIMI) ADVISORY COUNCIL

October 28, 1993 - 9 a.m. – Open Meeting
Shoney's Inn, 7007 West Broad Street, Richmond, Virginia.
☐ (Interpreter for the deaf provided upon request)

A regularly scheduled bi-monthly council meeting.

Contact: Rebecca W. Currin, Monroe Bldg., 101 N. 14th St., 17th Fl., Richmond, VA 23219, telephone (804) 225-2042 or toll-free 1-800-552-3962.

BOARD OF PSYCHOLOGY

October 25, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **VR 565-01-02. Regulations Governing the Practice of Psychology.**

Calendar of Events

The proposed amendments increase license renewal fees for psychologists and school psychologists and increase application fees for clinical psychologists. The proposed amendments also increase examination fees. The proposed regulations conform to § 54.1-113 of the Code of Virginia.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913.

VIRGINIA RESOURCES AUTHORITY

November 9, 1993 - 9:30 a.m. - Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

A meeting to approve minutes of the meeting of October 12, 1993, to review the authority's operations for the prior months, and to consider other matters and take other actions as they may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Mutual Building, 909 E. Main St., Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or fax (804) 644-3109.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† **October 20, 1993 - 1:30 p.m. - Open Meeting**
† **October 21, 1993 - 9 a.m. - Open Meeting (if necessary)**
Windmill Point, Route 695, White Stone, Virginia.

A work session and general business meeting of the board.

Contact: Phyllis Sisk, Special Assistant to the Commissioner, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1900 or toll-free 1-800-552-7096.

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November 8, 1993 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **VR 615-45-3. Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces.** These regulations

will establish guidelines for local departments of social services on sharing with the Family Advocacy Program information on founded child protective services complaints involving military families.

Statutory Authority: § 63.1-248.6 of the Code of Virginia.

Written comments may be submitted until November 8, 1993, to Suzanne Fountain, CPS Program Consultant, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Margaret Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

BOARD OF SOCIAL WORK

October 22, 1993 - 9 a.m. - Open Meeting
October 23, 1993 - 9 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A formal hearing. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9914.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **December 20, 1993 -** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Professional Soil Scientists intends to **repeal** regulations entitled: **VR 627-01-1, Public Participation Guidelines** and **adopt** regulations entitled **VR 627-01-1:1, Public Participation Guidelines.** The proposed guidelines will set procedures for the Board for Professional Soil Scientists to follow to inform and incorporate public participation when promulgating soil science regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

VIRGINIA STUDENT ASSISTANCE AUTHORITIES

Board of Directors

† **November 18, 1993 - 10 a.m. - Open Meeting**
411 East Franklin Street, 2nd Floor Board Room, Richmond, Virginia. ☒

A general business meeting.

Contact: Catherine E. Fields, Administrative Assistant, One Franklin Square, 411 E. Franklin St., Suite 300, Richmond, VA 23219, telephone (804) 775-4648 or toll-free 1-800-792-5626.

COMMONWEALTH TRANSPORTATION BOARD

† **October 20, 1993 - 1 p.m.** – Open Meeting
Sheraton Premier Hotel, 8661 Leesburg Pike, Pavilion Room #23, Vienna, Virginia. ☒ (Interpreter for the deaf provided upon request)

October 20, 1993 - 2 p.m. – Open Meeting
Northern Virginia Community College, The Forum Room, Annandale Campus, 8333 Little River Turnpike, Annandale, Virginia. ☒ (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

October 21, 1993 - 10 a.m. – Open Meeting
Northern Virginia Community College, The Forum Room, Annandale Campus, 8333 Little River Turnpike, Annandale, Virginia. ☒

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

SPECIALIZED TRANSPORTATION COUNCIL

† **October 20, 1993 - 10 a.m.** – Public Hearing
Roanoke City Administration Building, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

† **October 21, 1993 - 10 a.m.** – Public Hearing
Virginia Highlands Community College, Abingdon, Virginia.

† **October 25, 1993 - 10 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

† **October 26, 1993 - 10 a.m.** – Public Hearing
Arlington City Board, 2100 Clarendon Boulevard, Room

307, Arlington, Virginia.

† **October 29, 1993 - Time to be announced** – Public Hearing
Location to be announced.

A public hearing for funding proposal for the Specialized Transportation Council.

Contact: Margo Ellison, Secretary to Bob Knox, or Bob Knox, Special Assistant to the Commissioner, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 225-2271 or toll-free 1-800-552-4464.

TREASURY BOARD

October 20, 1993 - 9 a.m. – Open Meeting
November 17, 1993 - 9 a.m. – Open Meeting
December 15, 1993 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia.

A regular meeting of the board.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

November 10, 1993 - 8:30 a.m. – Open Meeting
Hyatt Richmond, 6624 West Broad Street, Richmond, Virginia.

Council members will gather at the Hyatt for transportation to correctional institutions to conduct on-site visits to vocational education programs at the institutions. Council committees will meet at the Hyatt from 2 p.m. to 5 p.m.

November 11, 1993 - 8:30 a.m. – Open Meeting
Hyatt Richmond, 6624 West Broad Street, Richmond, Virginia.

There will be a council session at the Hyatt to conduct council business and receive reports from liaison agency representatives.

Contact: Jerry M. Hicks, Executive Director, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218 or fax (804) 743-2088.

VIRGINIA VOLUNTARY FORMULARY BOARD

October 22, 1993 - 10 a.m. – Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

Calendar of Events

The purpose of this hearing is to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the Formulary add and delete drugs and drug products to the Formulary that became effective on February 17, 1993, and the most recent supplement to that Formulary. Copies of the proposed revisions to the Formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on October 22, 1993, will be made a part of the hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **October 22, 1993 - 10 a.m. – Open Meeting**
County Administration Office, 2nd and Washington Streets, Amherst, Virginia.

A general board meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

STATE WATER CONTROL BOARD

October 25, 1993 - 7:30 a.m. – Open Meeting
Eastern Shore Community College, 29300 Lankford Highway, Lecture Hall, Melfa, Virginia. ☒ (Interpreter for the deaf provided upon request)

October 26, 1993 - 2 p.m. – Open Meeting
James City County Board of Supervisors Room, 101 C. Mounts Bay Road, Building C, Williamsburg, Virginia. ☒ (Interpreter for the deaf provided upon request)

The staff of the Department of Environmental Quality will convene two public meetings to receive comments from the public on the proposed amendments to the Ground Water Withdrawal Regulation, VR 680-13-07. A question and answer session on the proposed action will be held one-half hour prior to the beginning of both of these meetings.

Contact: Terry D. Wagner, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5203.

October 26, 1993 - 1 p.m. – Open Meeting
Clarke County Parks and Recreation Building, Business

Route 7, Berryville, Virginia.

The State Water Control Board's staff is scheduling a series of meetings of the Shenandoah River Surface Water Management Area Advisory Group. The duties of this advisory group are to assist in determining the appropriateness of a designation, the boundaries of the proposed area, and the adequacy of data. The group must also evaluate the data to determine the minimum instream flow level that will activate the surface water withdrawal permits and set the various stages of conservation plans. Other tentatively scheduled meetings are Tuesday, November 30, 1993, and December 21, 1993. Contact should be made prior to the meeting date so as to be informed of any changes in the time of meeting, location or cancellation.

October 28, 1993 - 1 p.m. – Open Meeting
Municipal Building, 112 North Main Street, Board of Supervisors Room, Bridgewater, Virginia.

The State Water Control Board's staff is scheduling a series of meetings of the North River Surface Water Management Area Advisory Group. The duties of this advisory group are to assist in determining the appropriateness of a designation, the boundaries of the proposed area, and the adequacy of data. The group must also evaluate the data to determine the minimum instream flow level that will activate the surface water withdrawal permits and set the various stages of conservation plans. Other tentatively scheduled meetings are Thursday, November 18, 1993, and December 16, 1993. Contact should be made prior to the meeting date so as to be informed of any changes in the time of meeting, location or cancellation.

Contact: Thomas Felvey, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

COLLEGE OF WILLIAM AND MARY

November 5, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the College of William and Mary intends to adopt regulations entitled: **Motor Vehicle Parking and Traffic Rules and Regulations**. The proposed regulation regulates traffic and parking on the campus of the College of William and Mary.

Statutory Authority: § 23-9.2:3 of the Code of Virginia.

Written comments may be submitted until November 5, 1993, to Mark Gettys, Parking Services, College of William and Mary, P.O. Box 8795, Williamsburg, Virginia 23187-8795.

Contact: Nancy S. Nash, Assistant to the Vice President for Administration and Finance, P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (804) 221-2743.

BOARD OF YOUTH AND FAMILY SERVICES

† **November 9, 1993 - 8:30 a.m.** – Open Meeting
Ft. McGruder Inn, Route 60, Williamsburg, Virginia. ☒

Committee meetings will be held from 8:30 a.m. to 10 a.m., and a general meeting will begin at 10 a.m. to review programs recommended for certification or probation, to consider adoption of draft policies, and to discuss other matters that may come before the board.

Contact: Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

LEGISLATIVE

COMMISSION ON ECONOMIC DEVELOPMENT IN THE BLUE RIDGE REGION

† **November 8, 1993 - 1 p.m.** – Open Meeting
The Homestead, Hot Springs, Virginia.

A meeting to coincide with the 59th annual meeting of the Virginia Association of Counties. Individuals requiring interpreter services or other accommodations should contact Bettie Jacobsen, (804) 786-7681, by October 25, 1993.

Contact: Diane Horvath, Staff Attorney, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591, or the Committee Operations Office, telephone (804) 786-7681.

JOINT SUBCOMMITTEE STUDYING ENVIRONMENTAL AND BUILDING CODE MATTERS

October 18, 1993 - 1 p.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The joint subcommittee will meet for organizational purposes and to set an agenda for the interim. HJR 519.

Contact: Clarence M. Conner, Jr., Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING HUMAN IMMUNODEFICIENCY VIRUSES

† **November 29, 1993 - 10 a.m.** – Public Hearing
Alexandria City Council Chamber, 301 King Street, Alexandria, Virginia.

The joint subcommittee will meet for a public hearing at 10 a.m. A work session will begin at 1:30 p.m. and will include reports from various studies relating to the joint subcommittee's work. HJR 692.

Contact: Norma Szakal, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

† **November 15, 1993 - 2 p.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ☒

This will be a public information session on the Virginia Growth Strategies Act. Public comments are invited. For a copy of the legislation, contact the commission office.

Contact: Katherine L. Imhoff, Executive Director, General Assembly Building, 910 Capitol Street, Room 519B, Richmond, VA 23219, telephone (804) 371-4949.

JOINT SUBCOMMITTEE STUDYING VEHICLES POWERED BY CLEAN FUELS

October 20, 1993 - 10 a.m. – Open Meeting
James Madison University, Hall of Fame Room, Convocation Center, Harrisonburg, Virginia.

The subcommittee will meet to receive testimony and discuss legislative recommendations regarding clean fuels. HJR 100.

Contact: Dr. Alan Wambold, Research Associate, Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

October 20, 1993 - 9:30 a.m. – Open Meeting
Speaker's Conference Room, General Assembly Building, 910 Capitol Square, Richmond, Virginia.

A general business meeting to award contract for the Virginia Administrative Code.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA

Calendar of Events

23219, telephone (804) 786-3591.

STATE WATER COMMISSION

December 1, 1993 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor
Conference Room, Richmond, Virginia.

A meeting to discuss proposed legislation.

Contact: Shannon Varner, Staff Attorney, Division of
Legislative Services, 2nd Floor, 910 Capitol St., Richmond,
VA 23219, telephone (804) 786-3591.

VIRGINIA COMMISSION ON YOUTH

† **November 16, 1993 - 1 p.m.** – Public Hearing
General Assembly Building, 910 Capitol Square, House
Room C, Richmond, Virginia.

A public hearing on juvenile justice concerns: Serious
Juvenile Offenders "Criteria for the Trial of Juvenile
Offenders as Adults." HJR 431.

† **November 16, 1993 - 3 p.m.** – Public Hearing
General Assembly Building, 910 Capitol Square, House
Room C, Richmond, Virginia.

A public hearing on juvenile justice concerns:
Detention Homes "Solutions to Secure Juvenile
Detention Homes Overcrowding." HJR 446.

Contact: Joyce Huey, General Assembly Building, 910
Capitol Street, Richmond, VA 23219, telephone (804)
371-2481.

CHRONOLOGICAL LIST

OPEN MEETINGS

October 18

Accountancy, Board for
Environmental and Building Code Matters, Joint
Subcommittee Studying
Funeral Directors and Embalmers, Board of
- Executive Committee
- Legislative Committee
Health Professions, Board of
- Regulatory Research Committee
Intergovernmental Relations, Advisory Commission on
Nursing, Board of
- Special Conference Committee
Professional Counselors, Board of
- Task Force on Substance Abuse Certification

Professional and Occupational Regulation, Board of

October 19

Accountancy, Board for
Agriculture and Consumer Services
- Virginia Egg Board
Funeral Directors and Embalmers, Board of
- Examination Committee
- Inspection/Compliance Committee
Health Professions, Board of
Historic Resources, Department of
- State Review Board

October 20

† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
Corrections, Board of
Historic Resources, Board of
Housing Development Authority, Virginia
Local Debt, State Council on
Nursing, Board of
- Special Conference Committee
Optometry, Board of
† Social Services, State Board of
Transportation Board, Commonwealth
Treasury Board
Virginia Code Commission

October 21

† Chesapeake Bay Local Assistance Board
Fire Services, Board of
- Fire/EMS Education and Training
- Fire Prevention and Control
- Legislative/Liaison Committee
Prevention and Promotion Advisory Council
† Social Services, State Board of
Transportation Board, Commonwealth

October 22

† Disability Services Council
Fire Services Board, Virginia
Social Work, Board of
† Waste Management Facility Operators, Board for

October 23

Military Institute, Virginia
- Board of Visitors
Natural History, Museum of
- Board of Trustees
Social Work, Board of

October 25

Accountancy, Board for
Alcoholic Beverage Control Board
Water Control Board, State

October 26

Agriculture and Consumer Services, Department of
- Aquaculture Advisory Board
Health Services Cost Review Council, Virginia
Marine Resources Commission

Calendar of Events

Water Control Board, State

October 27

- † Chesapeake Bay Local Assistance Board
 - Central Area Review Committee
- Emergency Planning Committee, Local - Gloucester
- † Conservation and Recreation, Department of
 - Goose Creek Scenic River Advisory Board

October 28

- Education, Board of
- Governor's Advisory Board of Aging
- Maternal and Child Health Council
 - Subcommittee on Teen Pregnancy Prevention
- Professional Counselors, Board of
- Protection and Advocacy for Individuals with Mental Illness Advisory Council
- Water Control Board, State

October 29

- Criminal Justice Services Board
 - Private Security Services Advisory Board
- Longwood College
 - Board of Visitors

November 1

- Medicine, Board of
 - Advisory Board on Occupational Therapy

November 2

- Hopewell Industrial Safety Council
- † Labor and Industry, Department of
 - Apprenticeship Council

November 3

- † Agriculture and Consumer Services, Department of
 - Virginia See Potato Board
- † Virginia Employment Commission
 - State Advisory Board

November 4

- † Agriculture and Consumer Services, Department of
 - Virginia Cattle Industry Board
- Audiology and Speech-Language Pathology, Board of
- Emergency Planning Committee, Local - Chesterfield County
- Local Government, Commission on
- Medicine, Board of
 - Advisory Board on Physical Therapy

November 5

- Local Government, Commission on
- † Medicine, Board of
 - Advisory Committee on Physician Assistants

November 8

- † Agriculture and Consumer Services, Department of
 - Virginia Winegrowers Advisory Board
- Alcoholic Beverage Control Board
- † Economic Development in the Blue Ridge Region, Commission on

Intergovernmental Relations, Advisory Commission on

November 9

- † Medical Assistance Services, Board of Resources Authority, Virginia
- † Youth and Family Services, Board of

November 10

Historic Resources, Department of
Vocational Education, Virginia Council on

November 11

Vocational Education, Virginia Council on

November 15

- † Emergency Planning Committee, Local - Prince William County, Manassas City and Manassas Park City
- † Population Growth and Development, Commission on

November 16

- † Chesapeake Bay Local Assistance Board
 - Northern Area Review Committee
- Historic Resources, Department of

November 17

- † Chesapeake Bay Local Assistance Board
 - Central Area Review Committee
 - Southern Area Review Committee
- Education, Board of
- † Higher Education for Virginia, State Council of
- Historic Resources, Department of
- Local Debt, State Council on
- Treasury Board

November 18

- Education, Board of
- † Student Assistance Authorities, Virginia
 - Board of Directors

November 19

- Geology, Board for
- † Hemophilia Advisory Committee

November 22

- Alcoholic Beverage Control Board
- † Elections, State Board of

November 23

Health Services Cost Review Council, Virginia

December 1

- † Medicine, Board of
 - Advisory Committee on Acupuncturist
- Nursing Home Administrators, Board of
- Water Commission, State

December 2

- † Chesapeake Bay Local Assistance Board
- Emergency Planning Committee, Local - Chesterfield County

Calendar of Events

Longwood College
- Executive Committee

December 7

Hopewell Industrial Safety Council
Polygraph Examiners Advisory Board

December 14

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Higher Education for Virginia, State Council of

December 15

† Chesapeake Bay Local Assistance Board
- Central Area Review Committee
- Southern Area Review Committee
Local Debt, State Council on
Treasury Board

January 11, 1994

† Higher Education for Virginia, State Council of

November 16

Historic Resources, Board of
Historic Resources, Department of
† Youth, Virginia Commission on

November 17

Historic Resources, Board of
Historic Resources, Department of

November 17

Air Pollution Control Board, State

November 29

† Human Immunodeficiency Viruses, Joint
Subcommittee Studying

December 3

Education, State Board of

December 20

† Alcoholic Beverage Control Board

PUBLIC HEARINGS

October 18

Health Professions, Board of

October 20

† Specialized Transportation Council

October 21

Fire Services Board, Virginia
† Specialized Transportation Council

October 22

Medicine, Board of
Voluntary Formulary Board, Virginia

October 25

† Specialized Transportation Council

October 26

† Specialized Transportation Council

October 29

† Specialized Transportation Council

November 4

State Police, Department of

November 9

† Mental Health, Mental Retardation and Substance
Abuse Services, Department of

November 10

Historic Resources, Board of
Historic Resources, Department of